

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48909; File No. SR-NSCC-2003-16]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Data Services Only Members

December 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 30, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds a new Rule 31 to NSCC's Rules and amends miscellaneous other provisions of NSCC's Rules as they pertain to data services only members.²

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B),

and (C) below, of the most significant aspects of such statements.³

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change (i) expands the types of entities that may become data services only members under NSCC's rules to include the same type of entities that are eligible to use NSCC's mutual fund services; (ii) permits data services only members to access NSCC's mutual fund profile service; and (iii) consolidates many of NSCC's rules applicable to data services only members in a new Rule 31 of NSCC's rules.

The proposed rule change adds new types of entities that may become data services only members of NSCC. Data services only members are only eligible to access certain limited data and information services of NSCC specifically enumerated under NSCC's rules. They are not permitted to enter transactions for settlement through NSCC facilities.

Currently, a data services only member must meet the requirements of any clause (i) through (vi) of Section 1 of Rule 2 of NSCC's Rules; that is, they must be either a registered broker-dealer, bank or trust company, registered clearing agency, insurance company or entity licensed to sell insurance products, an investment company that has registered under the Investment Company Act of 1940, as amended, or an entity that has demonstrated to NSCC's Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from access to such services in order to be accepted as a data services only member.

These types of entities are identical to the types permitted to be NSCC members under Rule 2, subject in the case of Rule 2 membership to additional criteria relating to standards of financial responsibility and operational capability as set forth in NSCC's procedures. Since data services only members do not input transactions for settlement through NSCC's facilities and since NSCC is therefore not subject to settlement exposure by these members, data services only members are not subject to additional NSCC membership standards regarding financial responsibility.

The proposed rule change adds to the types of entities that may become data services only members the types that are

currently eligible to use mutual fund services under rule 52;⁴ that is, they may also be either (i) an investment advisor as defined in section 202(a)(ii) of the Investment Advisors Act of 1940, as amended; (ii) a principal underwriter as defined in section 2(a)(29) of the Investment Company Act of 1940, as amended, or a co-distributor, sub-distributor, or otherwise authorized to process mutual fund transactions; or (iii) an organization or entity that acts as a third-party administrator on behalf of defined contribution plans as defined in section 414(i) of the Internal Revenue Code of 1986, as amended.

The proposed rule change also adds NSCC's mutual fund profile service to the types of services available to data services only members. Mutual fund profile service ("MFPS") contains information on mutual funds and investment funds as input by the fund, including data on commission discounts ("breakpoints") available to certain investors buying shares of certain funds under the criteria established by the fund.

Allowing data services only members to access mutual fund profile service and expanding the entities eligible to become data services only members will assist in making mutual fund information, including breakpoint information, more widely available.

The proposed rule change also makes technical changes to NSCC's Rules by adding a new Rule 31 applicable to data services only members, consolidating for ease of reference many NSCC rule provisions applicable to data services only members. Consolidation of many of the provisions applicable to data services only members in Rule 31 will benefit NSCC participants by clarifying the responsibilities and entitlements directly applicable to data services only members and by making it easier for entities not familiar with clearing agency rules to join NSCC.

The technical changes proposed for consolidation of certain rule provisions applicable to data services only members will facilitate access to NSCC services by qualified entities. The proposed changes which add additional entity types to the ones which may currently qualify to become a data services only member and permit data services only members to access NSCC's mutual fund profile service will enable a wider group of mutual fund industry participants to have automated access to MFPS data about mutual funds. These

¹ 15 U.S.C. 78s(b)(1).

² The category of data services only member and modifications applicable to such category were approved by the Commission in Securities Exchange Act Release Nos. 44960 (October 19, 2001), 66 FR 56383 [File No. SR-NSCC-2001-14] (added data services only members as a new category to NSCC rules and permitted them to use limited services); 45560 (March 14, 2002), 67 FR 13200 [File No. SR-NSCC-2001-18] (permitted data services only members to access Fund/SERV for non-settling transactions); 47197 (January 15, 2003), 68 FR 3917 [File No. SR-NSCC-2002-13] (permitted data services only members to access NSCC's insurance processing services for non-settling transactions); and 47664 (April 7, 2003), 68 FR 17850 [File No. SR-NSCC-2003-04] (permitted data services only members and insurance carrier members to populate NSCC's new product repository databases with information relating to insurance products).

³ The Commission has modified parts of these statements.

⁴ Entities eligible to use mutual fund services include fund members admitted under Rule 51 and TPA members admitted under Rule 60 of NSCC's Rules.