

proposed changes to NSCC's rules facilitate the prompt and accurate clearance and settlement of securities transactions and are therefore consistent with the requirements of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not solicited nor received written comments on the proposed rule change. NSCC has worked closely with the industry to enhance the availability of mutual fund services to a wider range of mutual fund industry participants. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act⁵ and Rule 19b-4(f)(4)⁶ promulgated thereunder because the proposal effects a change in an existing service of NSCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of NSCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No.

SR-NSCC-2003-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at <http://www.nsccl.com/legal/>. All submissions should refer to the File No. SR-NSCC-2003-16 and should be submitted by January 14, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48946; File No. SR-NYSE-2003-34]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Amendment and Restatement of the Constitution of the Exchange To Reform the Governance and Management Architecture of the Exchange

December 17, 2003.

I. Introduction

On November 7, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend and restate the Exchange's Constitution to reform the

governance and management architecture of the Exchange. The proposed rule change was published for public comment in the **Federal Register** on November 13, 2003.³ In addition to the proposed amendments to the NYSE Constitution, which are the subject of this Order, the Notice of the proposed rule change included as exhibits the texts of the Proxy Statement sent to NYSE members detailing the proposed changes to the Constitution and a letter, dated November 4, 2003, from the Exchange's Interim Chairman and CEO to NYSE members supplementing the Proxy Statement (the "Supplemental Letter").⁴ On November 19, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ The Commission received 18 comment letters regarding the proposed rule change.⁶ This Order approves the Exchange's rule change as proposed.

II. Description of the Proposed Rule Change

The NYSE proposes to amend and restate its Constitution to significantly change and enhance its governance

³ Securities Exchange Act Release No. 48764 (November 7, 2003), 68 FR 64380 ("Notice").

⁴ In the Supplemental Letter, the NYSE's Interim Chairman and CEO indicated, among other things, his intention to bring before the NYSE Board several further amendments to the Constitution to further clarify and underscore the separation and independence of the regulatory function from the Exchange's marketplace function and from inappropriate influence by members and member organizations. The Commission notes that on November 24, 2003, the reconstituted Board voted to approve these amendments, as well as several others, to the NYSE Constitution. See Special Membership Bulletin regarding Additional Amendments to the Constitution, dated November 26, 2003. See also Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Annette L. Nazareth, Director, Division of Market Regulation ("Division"), Commission, dated December 4, 2003 ("Additional Amendments Letter"). The NYSE intends to file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act to incorporate these additional Constitutional changes. See *infra* notes 14, 22, 23, 35, 36, 39, 40, and 88.

⁵ See Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 19, 2003. In Amendment No. 1, the Exchange advised that the proposed rule change was approved by unanimous written consent of the Exchange's Board of Directors effective November 13, 2003, and by vote of the members of the Exchange on November 18, 2003. The Exchange noted that, as a result, its internal procedures with respect to the proposed rule change were complete. Amendment No. 1 is simply a technical amendment and thus it is not necessary for the Commission to seek public comment on it.

⁶ A list of commenters on the rule proposal, whose comments were received as of December 12, 2003, is attached as Exhibit A to this Order. The public file for the NYSE's proposal, which includes all comment letters received on the proposal, is located at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549-0102.

⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ 17 CFR 240.19b-4(f)(4).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.