

II. Requested Authority

Black Hills, therefore, requests the Commission to permit it:

1. To extend Black Hills' time for certain filings with the Commission, from October 1, 2005, through February 8, 2006, the effective date of the Act's repeal (describing accounting systems and cost allocation methodologies);

2. To extend the time for Black Hills' full implementation of Black Hills Service, from December 28, 2005, through February 8, 2006, the effective date of the Act's repeal (accounting systems and cost allocation methodologies); and

3. To extend the time for Black Hills' conversions of non-exempt market-based rate affiliate transactions to cost-based transactions from December 28, 2005, through February 8, 2006, the effective date of the Act's repeal.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 05-18817 Filed 9-20-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 52444/September 15, 2005 and 27067/September 15, 2005]

Securities Exchange Act of 1934 and Investment Company Act of 1940; Order Under Section 17a and Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Specified Provisions of the Exchange Act and Certain Rules Thereunder; Order Under Section 6(c) and Section 38(a) of the Investment Company Act of 1940 Granting Exemptions From Specified Provisions of the Company Act and Certain Rules Thereunder

Section 36 of the Securities Exchange Act of 1934 (the "Exchange Act") authorizes the Securities and Exchange Commission (the "Commission"), by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Section 17A(c)(1) of the Exchange Act provides that the appropriate regulatory agency, by rule or by order, upon its own motion or upon application, may

conditionally or unconditionally exempt any person or security or class of person or securities from any provision of that section or any rule or regulation prescribed under Section 17A, if the appropriate regulatory agency finds that such exemption is in the public interest and consistent with the protection of investors and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.¹

Section 6(c) of the Investment Company Act of 1940 (the "Company Act") provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Company Act, or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Company Act. Section 38(a) of the Company Act provides that the Commission may make, issue, amend and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission under the Act.

Hurricane Katrina made landfall along the Gulf Coast on August 29, 2005, causing catastrophic damage to portions of Alabama, Louisiana and Mississippi. The storm and subsequent flooding displaced individuals and businesses and disrupted communications across the Gulf Coast region. We are issuing this Order to address the needs of companies and individuals located within the areas affected by Hurricane Katrina that must comply with the requirements of the federal securities laws.

I. Filing Requirements for Registrants and Other Persons

The lack of communications, facilities and available staff and professional advisors as a result of Hurricane Katrina could hamper the efforts of public

¹ Section 3(a)(34) defines "appropriate regulatory authority" when used in the context of transfer agents as generally (1) the Comptroller of the Currency, in the case of a national bank or a subsidiary of such bank; (2) the Board of Governors of the Federal Reserve System or subsidiary thereof, a bank holding company or a subsidiary of a bank holding company; (3) the Federal Deposit Insurance Corporation; and (4) the Commission in the case of all other transfer agents. Section 17A(c)(1) also requires that the Commission not object to the use of exemptive authority in instances where an appropriate regulatory authority other than the Commission is providing exemptive relief.

companies and other persons in the affected areas in their compliance with filing deadlines. At the same time, investors have an interest in the timely availability of required information about these companies and the activities of persons required to file schedules and reports with respect to these companies. While the Commission believes that the relief from filing requirements provided by this Order is both necessary in the public interest and consistent with the protection of investors, we remind public companies and other persons who are the subjects of this Order to continue to evaluate their obligations to make materially accurate and complete disclosures in accordance with the anti-fraud provisions of the federal securities laws.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act, that a registrant (as defined in Exchange Act Rule 12b-2) subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), and any person required to make any filings with respect to such a registrant, is exempt from any requirement to file or furnish materials with the Commission under Exchange Act Sections 13(a), 13(d), 13(g), 14(a), 14(c), 15(d) and 16(a), Regulations 13A, 13D, 13G, 14A, 14C and 15D, and Rule 16a-3, as applicable, for the period from and including August 29, 2005 to October 14, 2005, where the conditions below are satisfied.

Conditions

(a) With respect to registrants, the address of the registrant's principal executive offices listed on the cover page of the most recent periodic report filed by the registrant on Form 10-Q, 10-QSB, 10-K, or 10-KSB is within one of the counties or parishes designated as of this date to be within the Presidentially Declared Disaster Areas where Individual Assistance has been authorized by the Federal Emergency Management Agency as a result of Hurricane Katrina (the "Presidential Disaster Areas"), which include the Louisiana parishes of: Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana; the Mississippi counties of: Adams, Amite, Attala, Claiborne, Choctaw, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Jackson, Jasper,

Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, Winston, and Yazoo; and the Alabama counties of Baldwin, Clarke, Choctaw, Mobile, Pickens, Greene, Hale, Sumter, Tuscaloosa, and Washington.

(b) With respect to persons other than registrants, the address listed on the most recently filed schedule or form that the person had filed, or the address that the person would be required to list on any covered schedule or form required to be filed during the time period covered by this Order, is within one of the Presidential Disaster Areas; and

(c) The registrant or person files with the Commission any report, schedule or form required to be filed during the period from and including August 29, 2005 to October 14, 2005 on or before October 17, 2005.

II. Furnishing of Proxy and Information Statements

The conditions in the areas affected by Hurricane Katrina, including displacement of hundreds of thousands of individuals and the destruction of property, have prevented and will continue to prevent the delivery of mail to the region. In light of these conditions, we believe that relief is warranted for those seeking to comply with our rules imposing requirements to furnish materials to security holders when mail delivery is not possible.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act, that a registrant or any other person is exempt from the requirements to furnish proxy statements, annual reports and other soliciting materials, as applicable (the "Soliciting Materials"), under Exchange Act Rules 14a-3 and 14a-12, and the requirements to furnish information statements and annual reports, as applicable (the "Information Materials"), under Exchange Act Rules 14c-2 and 14c-3, where the conditions below are satisfied.

Conditions

(a) The registrant's security holder has a mailing address located within a zip code where, as a result of Hurricane Katrina, the United States Postal Service has suspended mail service of the type or class customarily used by the registrant;

(b) The registrant or other person making a solicitation has followed normal procedure when furnishing the Soliciting Materials to the security

holder in order to ensure that the Soliciting Materials preceded or accompanied the proxy, as required by the rules applicable to the particular form of Soliciting Materials, or, in the case of Information Materials, the registrant has followed normal procedure when furnishing the Information Materials to the security holder in accordance with the rules applicable to Information Materials; and

(c) If requested by the security holder, the registrant or other person provides the Soliciting Materials or Information Materials by a means reasonably designed to furnish the Soliciting Materials or Information Materials to the security holder.

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Any registrant or other person unable to meet a deadline (including any shareholder who is unable to meet a deadline applicable to a shareholder proposal) or a delivery obligation as a result of Hurricane Katrina, or in need of other assistance related to their public filings, should contact the Division of Corporation Finance at (202) 551-3500 or at cfhotline@sec.gov. The Division will consider any requests on a case-by-case basis.

III. Relief Relating Specifically to Registered Investment Companies Regarding Transmittal of Annual and Semi-Annual Reports to Shareholders Required by the Company Act and the Rules Thereunder

For reasons similar to those cited in Section II, we believe that relief is warranted for the transmittal by registered investment companies of annual and semi-annual reports to shareholders.

Accordingly, *it is ordered*, pursuant to Sections 6(c) and 38(a) of the Company Act that, for 90 calendar days beginning on August 29, 2005, a registered management investment company is exempt from the requirements of Section 30(e) of the Company Act and Rule 30e-1 thereunder to transmit annual and semi-annual reports to shareholders;

And, for 90 calendar days beginning on August 29, 2005, a registered unit investment trust is exempt from the requirements of Section 30(e) of the Company Act and Rule 30e-2 thereunder to transmit annual and semi-annual reports to shareholders,

Provided that:

(a) The shareholder or unitholder's mailing address for transmittal as listed in the records of the registered investment company has a zip code for which the United States Postal Service has suspended mail service, as a result of Hurricane Katrina, of the type or class

customarily used by the investment company for transmittal of reports; and

(b) The registered investment company or other person promptly transmits the reports (i) if requested by the shareholder or unitholder, or (ii) at the earlier of the end of the 90-day period or the resumption of the applicable mail service.

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Registered investment companies experiencing difficulties in complying with their obligations after the 90-calendar-day period, or in need of additional information or assistance regarding issues arising under the Company Act, should contact the Division of Investment Management, Office of Chief Counsel, at (202) 551-6825 or imocc@sec.gov or use the contact information provided at the end of Section II of the Order.

IV. Transfer Agent Compliance With Sections 17A and 17(f) of the Exchange Act

Exchange Act Section 17A and Section 17(f), as well as the rules promulgated under Sections 17A and 17(f), contain requirements for registered transfer agents relating to, among other things, processing securities transfers, safekeeping of investor and issuer funds and securities, and maintaining records of investor ownership. Following the events of Hurricane Katrina, registered transfer agents located in the affected region may have difficulty complying with some or all of their obligations as registered transfer agents. In addition, transfer agents located outside the affected region in many cases may be unable to conduct business with entities or securityholders inside the region, thereby making it difficult to process securities transactions and corporate actions in conformance with Section 17A, Section 17(f) and the rules thereunder.

While the national clearance and settlement system continues to operate well in light of this emergency, the Commission recognizes that securities transfers and payments to and from securityholders in the affected region may present compliance issues for many transfer agents. Therefore, the Commission is using its authority under Section 17A and Section 36 of the Exchange Act to relax temporarily certain regulatory provisions in order to provide transfer agents with flexibility in coping with the situation.² The

² This order temporarily exempts transfer agents from the requirements of (1) Section 17A of the Exchange Act and Rules 17Ad-1 through 17Ad-21T

Commission finds the following exemption to be in the public interest and consistent with the protection of investors and the purpose of Section 17A of the Exchange Act, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

Accordingly, *it is ordered*, pursuant to Sections 17A and 36 of the Exchange Act, that any registered transfer agent located in the Presidential Disaster Areas that is unable to comply with Section 17A and Section 17(f) of the Exchange Act and the rules promulgated thereunder, as applicable, is hereby temporarily exempted from complying with such provisions for the period from and including August 29, 2005 to October 17, 2005, where the conditions below are satisfied.

Conditions

(a) *Books and Records Maintained at Affected Locations.* A registered transfer agent that maintained books and records at locations inside the Presidential Disaster Areas must notify the Commission in writing by October 17, 2005, if such transfer agent knows or believes that the books and records it is required to maintain pursuant to Section 17A and the rules thereunder were lost, destroyed, or materially damaged. To the extent feasible, the transfer agent should include as much information as possible as to the type of books and records that were maintained, the names of the issuers for whom such books and records were maintained, and the extent of the loss of, or damage to, such books and records.

(b) *Securityholder Funds and Securities.* A transfer agent registered with the Commission and holding securityholder or issuer funds or securities must notify the Commission in writing by October 17, 2005, if such transfer agent knows or believes that funds or securities belonging to either issuers or securityholders were lost, destroyed, stolen, or unaccountable for any reason. To the extent possible, the transfer agent should include information regarding the dollar amount of any such funds and the number of such securities.

Transfer agents that have custody or possession of any securityholder or issuer funds or securities shall use all reasonable means available to ensure that all such securities are held in safekeeping and are handled, in light of all facts and circumstances, in a manner reasonably free from risk of theft, loss, or destruction and that all funds are

protected against misuse. To the extent possible, all securityholder or issuer funds that remain in the custody of the transfer agent shall be maintained in a separate bank account held for the exclusive benefit of securityholders until such funds are properly remitted.

The notifications required under (a) and (b) above shall be sent to: Securities and Exchange Commission, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549.

It is further ordered, pursuant to Sections 17A and 36 of the Exchange Act, that any registered transfer agent that is residing outside the Presidential Disaster Areas and is unable to comply with any provision of Section 17A or any provision of any rule thereunder due to an inability to conduct business with persons (entities or individuals) inside the Presidential Disaster Areas or an inability to remit funds or securities to securityholders residing in the Presidential Disaster Areas is hereby temporarily exempted from compliance with such provisions with respect to those specific transactions for the period from and including August 29, 2005, to October 17, 2005, on the condition that such transfer agent must make and keep a record of the extent of and the reason for noncompliance and retain those records for a period of no less than three years. As a further condition to this exemption, to the extent the transfer agent has not already done so, registered transfer agents shall maintain in a separate bank account held for the exclusive benefit of securityholders all securityholder funds to be remitted to securityholders until such funds are properly remitted to the securityholders.

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The Commission encourages registered transfer agents and the issuers for whom they act to inform affected securityholders whom they should contact concerning their accounts, their access to funds or securities, and other shareholder concerns. If feasible, issuers and their transfer agents should consider placing a notice on their websites or providing toll free numbers to respond to inquiries.

Transfer agents experiencing difficulties in complying with obligations after October 17, 2005, or in need of additional information, should contact the Division of Market Regulation, Office of Interpretation and Guidance, at (202) 551-5760 or marketreg@sec.gov or use the contact information provided at the end of Section II of the Order.

V. Independence—Bookkeeping or Other Services Related to the Accounting Records or Financial Statements of the Audit Client

The conditions in the areas affected by Hurricane Katrina, including displacement of hundreds of thousands of individuals, the destruction of property and loss or destruction of corporate records, may require massive and extraordinary efforts to reconstruct lost or destroyed accounting records. The Commission understands that in this unique situation an audit client may look to its auditor for assistance in reconstruction of its accounting records because of the auditor's knowledge of the client's financial systems and records. Under Section 10A(g)(1) of the Exchange Act and Rule 2-01(c)(4)(i) of Regulation S-X, auditors are prohibited from providing bookkeeping or other services relating to the accounting records of the audit client, and in Rule 2-01(c)(4)(i) of Regulation S-X, these prohibited services are described as including "maintaining or preparing the audit client's accounting records" or "preparing or originating source data underlying the audit client's financial statements." In light of the conditions in areas affected by Hurricane Katrina, however, we believe that limited relief from these prohibitions is warranted for those registrants and other persons that are required to comply with the independence requirements of the federal securities laws and the Commission's rules and regulations thereunder and that are affected by those conditions.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act, that independent certified public accountants engaged to provide audit services to registrants and other persons required to comply with the independence requirements of the federal securities laws and the Commission's rules and regulations thereunder are exempt from the requirements of Section 10A(g)(1) of the Exchange Act and Rule 2-01(c)(4)(i) of Regulation S-X, where the conditions below are satisfied.

Conditions

(a) With respect to audit clients that are registrants, the address of the registrant's principal executive offices listed on the cover page of the most recent periodic report filed by the registrant on Form 10-Q, 10-QSB, 10-K, or 10-KSB is within one of the Presidential Disaster Areas;

(b) With respect to audit clients other than registrants, the address listed on the most recently filed schedule or form

that the audit client had filed, or the address that the audit client would be required to list on any covered schedule or form required to be filed, is within one of the Presidential Disaster Areas;

(c) Services provided by the auditor are limited to reconstruction of previously existing accounting records that were lost or destroyed as a result of Hurricane Katrina and such services cease as soon as the client's lost or destroyed records are reconstructed, its financial systems are fully operational and the client can effect an orderly and efficient transition to management or other service provider; and

(d) With respect to issuers, the services provided by the issuer's auditor pursuant to this Order are subject to pre-approval by the issuer's audit committee as required by Rule 2-01(c)(7) of Regulation S-X.

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Auditors or audit clients with questions about this section of the Order or with other questions relating to auditor independence are encouraged to call the Office of the Chief Accountant directly at (202) 551-5300 or use the contact information provided at the end of Section II of the Order.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 05-18761 Filed 9-20-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52446; File Nos. SR-DTC-2005-04, SR-FICC-2005-10, and SR-NSCC-2005-05]

Self-Regulatory Organizations; The Depository Trust Company, Fixed Income Clearing Corporation, and National Securities Clearing Corporation; Order Approving Proposed Rule Change To Establish a Fine for Members Failing To Conduct Connectivity Testing

September 15, 2005.

I. Introduction

On May 13, 2005, May 3, 2005, and on May 4, 2005, respectively, The Depository Trust Company ("DTC"), the Fixed Income Clearing Corporation ("FICC"), and the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule changes SR-DTC-2005-04, SR-FICC-2005-10, and SR-NSCC-2005-05 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act").¹ On June 7, 2005, NSCC amended its proposed rule change. Notice of the proposals, as amended, was published in the **Federal Register** on July 21, 2005.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule changes.

II. Description

DTC, FICC, and NSCC are imposing a fine on any member that is required to conduct connectivity testing for business continuity purposes and fails to do so.

In the aftermath of September 11, 2001, and in conjunction with a financial industry white paper, DTC, FICC, and NSCC require connectivity testing each year for critical ("Top Tier") members.³ The criteria used by DTC, FICC, and NSCC to identify their respective Top Tier members were revenues, clearing fund contributions, settlement amounts, and trading volumes. Connectivity testing for the Top Tier members was initiated on January 1, 2004. Due to the critical importance of being able to assess whether a Top Tier member has sufficient operational capabilities, DTC, FICC, and NSCC have determined that they need the ability to fine any Top Tier member that does not test.⁴

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 52403 (July 15, 2005), 70 FR 42122.

³ The Federal Reserve, Office of the Comptroller of the Currency, and the Commission issued "Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System." [68 FR 17809 (April 11, 2003)]. This document provided guidelines that required core clearing and settlement organizations, such as DTC, FICC, and NSCC, and others in the financial industry to manage business continuity capabilities. DTC, FICC, and NSCC developed their testing of Top Tier firms based on the guidelines outlined in the white paper.

⁴ Pursuant to DTC Rule 2, "Participants and Pledges," participants must furnish, upon DTC's request, information sufficient to demonstrate operational capability. In addition, DTC Rule 21, "Disciplinary Sanctions," allows DTC to impose fines on participants for any error, delay or other conduct detrimental to the operations of DTC.

Pursuant to GSD Rule 3, "Responsibility, Operational Capability, and Other Membership Standards of Comparison-Only Members and Netting Members," the GSD may require members to fulfill operational testing requirements as the GSD may at any time deem necessary. Pursuant to MBSD Rule 1, Section 3 of Article III, all MBSD applicants and members agree to fulfill operational testing requirements and related reporting requirements that may be imposed to ensure the continuing operational capability of the applicant.

Pursuant to NSCC Rule 15, "Financial Responsibility and Operational Capability," members must furnish to NSCC adequate assurances of their financial responsibility and operational capability as NSCC may at any time deem necessary. In addition, NSCC Rule 48, "Disciplinary Procedures," allows NSCC to impose a fine on participants for any error, delay, or other

Currently, each member of DTC, FICC, and NSCC that is designated as Top Tier is advised of this status and is provided with information on the testing requirements. Under DTC, FICC, and NSCC's current procedures, if testing is not completed by a Top Tier member by the end of June, a reminder notice is sent to the member. Thereafter, another reminder notice is sent in October and, if necessary, again in December.

The reminder notice sent in December will advise that if testing is not completed by December 31, a fine of \$10,000 will be imposed. These fines will be collected from members in January of the following year. The Membership and Risk Management Committee will be notified of all members that were fined for failing to complete connectivity testing.

In the event that any member fails to complete connectivity testing for two successive years, the fine that will be imposed at that time will be \$20,000. Failure to complete testing for more than two successive years will result in disciplinary action, including potential termination of membership.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.⁵ The Commission finds that DTC, FICC, and NSCC's proposed rule changes are consistent with this requirement because the implementation of the fines should help DTC, FICC, and NSCC to enforce compliance with their connectivity testing rules for business continuity purposes and as a result should better enable them to ensure the safeguarding of securities and funds which are in their custody or control.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-DTC-2005-04, SR-FICC-2005-10, and SR-NSCC-2005-05) be and hereby are approved.

conduct that is determined to be detrimental to the operations of NSCC.

⁵ 15 U.S.C. 78q-1(b)(3)(F).