

[Release No. 34-35423; File No. SR-NSCC-95-01]

**Self-Regulatory Organizations;
National Securities Clearing
Corporation; Notice of Filing and
Immediate Effectiveness of Proposed
Rule Change Expanding the Types of
Payments Processed Through the
Mutual Fund Networking Service**

February 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ ("Act"), notice is hereby given that on January 10, 1995, 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**

NSCC proposes to modify its Mutual Fund Networking Service rules to permit settlement of additional payments pertaining to mutual fund activity.

**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.

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

NSCC's Mutual Fund Networking Service currently enables Networking participants to transmit mutual fund customer account data among NSCC's broker-dealer and mutual fund processing members² and to settle

mutual fund dividend payments.³ The proposed rule change will modify the Mutual Fund Networking Service to permit settlement of other payments pertaining to mutual fund activity in addition to dividend payments.⁴ NSCC currently proposes to allow Networking participants to settle payments which result from standing instructions (e.g., monthly) given by a customer to a mutual fund to liquidate a certain amount or value of shares or specific instructions given by a customer directly to a mutual fund to liquidate shares.⁵ The proposed rule modifies the existing Mutual Fund Networking Service to better meet the needs of NSCC's Networking participants by expanding the standardization of money payments on an automated basis.

NSCC believes the proposed rule change is consistent with the requirements of the Act, and specifically Section 17A of the Act, and the rules and regulations thereunder, because the proposal will facilitate the prompt and accurate clearance and settlement of securities transactions.

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

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition

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

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

**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)⁶ of the Act and pursuant to Rule 19b-4(e)(4)⁷ promulgated thereunder, in that the proposal effects a change in an existing service that does not adversely affect the safeguarding of

³ Securities Exchange Act Release No. 28608 (November 19, 1990), 55 FR 48193 [File No. NSCC-89-13] (order granting permanent approval to NSCC's automated settlement of mutual fund dividends).

⁴ Payments made through the Networking Service are not guaranteed by NSCC; therefore, NSCC reserves the right to reverse any credit in the event NSCC does not receive a corresponding payment from a Fund member.

⁵ NSCC will be required to file a proposed rule change pursuant to Section 19(b) of the Act before allowing other types of payments to be processed through the Networking service.

⁶ 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

⁷ 17 CFR 240.19b-4(e)(4) (1994).

securities or funds in NSCC's custody or control and does not significantly affect the respective rights or obligations of NSCC or persons using NSCC's services. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statement 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. All submissions should refer to File No. SR-NSCC-95-01 and should be submitted by March 27, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-5372 Filed 3-3-95; 8:45 am]

BILLING CODE 8010-01-M

**[Investment Company Act Rel. No. 20925/
International Rel. No. 788 812-8970]**

Enersis S.A.; Notice of Application

February 27, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Enersis S.A.

RELEVANT ACT SECTION: Section 2(a)(9).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it controls

⁸ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² For a detailed description of NSCC's Networking Service, refer to Securities Exchange Act Release No. 26376 (December 28, 1988), 53 FR 52544 [File No. SR-NSCC-88-08] (order granting approval to NSCC's Networking Service).

Empresa Nacional de Electricidad S.A. ("Endesa"), notwithstanding that it owns less than 25% of its voting securities.

FILING DATE: The application was filed on April 28, 1994 and amended on July 8, 1994 and October 6, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 23, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Santo Domingo 789, Santiago, Chile.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, at (202) 942-0570, or Barry Miller, Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Chilean holding company primarily engaged through its majority-owned subsidiaries and related companies in the utility business. Applicant is not registered under the Investment Company Act by virtue of its reliance on rule 3a-1.¹

2. Endesa is a Chilean electric generation company. Applicant owns directly and indirectly approximately 17% of Endesa and is Endesa's largest shareholder. Four of the five remaining

largest shareholders of Endesa are entities comparable to United States pension funds. Under Chilean law, the amount one of these entities can invest in a company similar to Endesa is the lesser of 7% of its assets or 7% of Endesa's equity. The fifth large shareholder of Endesa is a company owning approximately 3.4% of Endesa's shareholder equity. Applicant, therefore, owns more than twice as many shares as the next largest shareholder.

3. Three of Endesa's nine member board are Enersis officers or directors. Enersis's equity ownership gives it the power to elect two of Endesa's directors; a third Enersis official on Endesa's board publicly campaigned for the position. These persons also hold the positions of Enersis's Chairman of the Board, its Chief Executive Officer, and its Director of Planning and Development. Applicant's Chief Executive Officer is the Chairman of the board of Endesa. The Chairman is entitled to cast a second vote in the event of a tie of Endesa's board of directors, thereby giving Enersis an additional vote.

4. Enersis, previously a government-owned utility, was privatized in 1987 and restructured to become a holding company. Since its privatization, all of Enersis's stock acquisitions have been of utility businesses. Enersis's strategy has been to concentrate its activities on its core utility business and to take stock positions in other entities only under circumstances where it is the dominant shareholder or where it and Endesa together are the dominant shareholders of the entity whose stock is being acquired.

5. Jose Yuraszcek, Enersis's Chief Executive Officer, became Endesa's Chairman in April 1992. He is commonly referred to as the "Electricity Czar" in Chile and is identified by the public as personifying Endesa.² Mr. Yuraszcek is also Chairman of Endesa's subsidiary formed to build, own, and manage Endesa's major power plant development.

6. Endesa's Director of Planning and Development was assigned to Endesa at Enersis's direction and the planning and development staffs of Enersis and Endesa have collaborated on various projects.

Applicant's Legal Analysis

1. Section 2(a)(9) defines "control" as "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official

position with such company." Section 2(a)(9) also creates a presumption that owners of more than 25% of a company's voting securities control such company, and the owners of 25% or less of a company's voting securities do not control such company. A securityholder may obtain an SEC order rebutting either presumption by producing evidence to the contrary.

2. Applicant seeks an order of the SEC declaring that it controls Endesa, notwithstanding the presumption under the Act that ownership of less than 25% of a company's voting securities is insufficient to establish control.³

3. Applicant argues that the facts set forth in the application are sufficient to support a finding that applicant controls Endesa. Applicant holds the largest share of Endesa's voting securities and has significant representation on Endesa's board of directors.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-5334 Filed 3-3-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-20926; File No. 812-9230]

The Equitable Life Assurance Society of the United States, et al.

February 27, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Equitable Life Assurance Society of the United States ("Equitable"), Separate Account No. 45 of Equitable (the "Account"), any other separate account established by Equitable in the future to support certain deferred variable annuity contracts and certificates issued by equitable ("Other Account"), and Equitable Capital Securities Corporation ("ECCS").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of: (i) a mortality and expense risk charge from the assets of the Account in

³ Any order concerning the application will be limited to determining whether Enersis controls Endesa under section 2(a)(9). Enersis is not seeking any determination as to whether it "primarily" controls Endesa for purposes of rule 3a-1 or whether applicant falls within the definition of investment company under the Act.

¹ Rule 3a-1 provides that an issuer meeting the statutory definition of an investment company is not an investment company if: (a) no more than 45% of the value of its total assets (exclusive of government securities and cash items) consists of securities other than government securities, securities issued by employee securities companies, securities of certain majority-owned subsidiaries, and securities issued by companies under the primary control of the issuer that are not investment companies; and (b) no more than 45% of its income after taxes (over the last four fiscal quarters combined) is received from such securities.

² "Electricity Czar," Que Pasa, May 1992.