

immediately subject to these rule changes on June 15, 2001. Members who have a position which will subject them to a deposit requirement based on the market domination calculations will also be subject to these rule changes on June 15, 2001. NSCC will place every remaining member into deciles and will apply the revised clearing fund methodologies pursuant to a step-by-step, decile-by-decile plan based upon the volatility classification of each such member's unsettled portfolio. Accordingly, members with the most volatile portfolios will be subject to these rule changes first, on or shortly after June 15, 2001, provided, however, that to the extent any such member has significant CNS obligations resulting from options exercises and assignments or is a municipal securities brokers' broker, it will be subject to these rule changes in conjunction with or<sup>6</sup> after all other members but in no event later than December 31, 2002.<sup>7</sup>

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>8</sup> and the rules and regulations thereunder applicable to NSCC because it will permit NSCC to assure the safeguarding of funds and securities for which it is responsible by allowing NSCC to more appropriately collect collateral to cover members' exposures.

*(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*

Written comments relating to the proposed rule change have not yet 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**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and

publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**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. 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 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 also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-2001-04 and should be submitted by June 5, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44277; File No. SR-NSCC-2001-05]

**Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Related to Additional Procedures for Class A Surveillance of Certain Settling Members and to the Collection of Clearing Fund and Other Collateral Deposits from These Settling Members**

May 8, 2001.

Pursuant to Section 10(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 24, 2001, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through December 31, 2002.

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

The proposed rule change extends the temporary approval of additional procedures that govern the placement of NSCC members of Class A surveillance and the clearing fund deposit and other collateral requirements for such members until NSCC's proposed rule change, SR-NSCC-2001-04, is phased in.<sup>2</sup>

**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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> In NSCC-2001-04, which is subject to Commission approval, NSCC proposes to apply its current clearing fund requirements for settling members on surveillance (Addendum O) to all NSCC members and to incorporate those requirements as well as all the clearing fund formulae and requirements currently found in Addendum B into NSCC's Procedure XV. The phase in of the new procedures under SR-NSCC-2001-04 will begin June 15, 2001, and will end no later than December 31, 2002. See Securities Exchange Act Release No. 44276 (May 8, 2001) [File No. NSCC-2001-04] (notice of filing of proposed rule change to modify and consolidate clearing fund rules).

<sup>6</sup> The April 27, 2001 amendment to the rule filing added the language "in conjunction with or" to the filing.

<sup>7</sup> NSCC will keep effective all rules affected by this filing until all members are subject to the revised rules.

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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.<sup>3</sup>

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

NSCC seeks to extend the temporary approval of Addendum O, which governs the application of Class A surveillance procedures and the additional collateralization requirements for settling members that engage in certain over-the-counter ("OTC") market making activities. Addendum O is designed to decrease the risks associated with OTC market makers by use of Class A surveillance and special collateralization procedures. The Commission originally granted temporary approval on May 10, 1996, and has subsequently extended its approval through May 31, 2001.<sup>4</sup>

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder because the surveillance and additional collateralization procedures will facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible and in general will protect investors and the public interest.

*(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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

<sup>3</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>4</sup> For a complete discussion of NSCC's Class A surveillance procedures and collateralization requirements refer to Securities Exchange Act Release Nos. 37202 (May 10, 1996), 61 FR 24993 [File No. SR-NSCC-95-17]; 38622 (May 19, 1997), 62 FR 27285 [File No. SR-NSCC-97-04]; 40034 (May 27, 1998), 63 FR 30277 [File No. SR-NSCC-98-03]; 41478 (June 4, 1999), 64 FR 31664 [File No. SR-NSCC-99-06]; and 42864 (May 30, 2000), 65 FR 36204 [File No. SR-NSCC-99-09] (Commission approval date corrected in **Federal Register**, 65 FR 42065).

<sup>5</sup> 15 U.S.C. 78q-1.

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

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 and generally to protect investors and the public interest.<sup>6</sup> As the Commission previously stated, it finds that NSCC's proposed rule change is consistent with these obligations under the Act because it should help NSCC protect itself, its members, and investors from members that pose an increased risk because of their involvement in OTC market making.<sup>7</sup>

Under the proposal, NSCC will continue to have the authority with respect to members which participate in OTC market making activities or clear for correspondents that engage in such activity to (1) place such members on Class A surveillance, (2) requires such members to post additional collateral with NSCC, and (3) calculate an alternative clearing fund requirement for such members when additional risk factors are present. Collectively, the higher level of surveillance, the additional level of collateralization, and the alternative clearing fund requirements should help ameliorate NSCC's exposure, which in turn should assist NSCC in fulfilling its obligations under the Act to safeguard securities and funds for which it has control or is responsible and to protect investors and the public interest.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause because accelerated approval will allow NSCC to continue to utilize its Class A surveillance procedures, the interim collateralization policy, and the alternative clearing fund formula without interruption when the previous temporary approval expires on June 1, 2001, and until NSCC's proposed rule change, SR-NSCC-2001-04, is completely phased in.

**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. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with 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 Room, 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 the File No. SR-NSCC-2001-05 and should be submitted by June 5, 2001.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-NSCC-2001-05) be and hereby is approved through December 31, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44272; File No. SR-NYSE-2001-07]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Provide for an Allocation Policy for Exchange-Traded Funds Trading on an Unlisted Trading Privileges Basis**

May 7, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 25, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 7, 2001, the NYSE field

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> *Supra* note 4.