

proposal does not allow the NASD Board to wage an all-out offensive on behalf of its candidates, as claimed by the commenter.<sup>24</sup> Therefore, the Commission finds that this proposed amendment permitting the NNC to participate in contested election under the measured terms proposed by the NASD is consistent with section 15A(b)(4) because, as proposed, it ensures fair representation by fostering dialogue among the NASD membership about candidates eligible for election to the NASD Board without giving unfair advantage to NNC-supported candidates.

#### *Access to Ballot by Petition*

The Commission further finds that changes to the petition process for individual nominees and a slate of nominees also is consistent with section 15A(b)(4)'s fair access requirement. Currently, the By-Laws provide that a candidate—including slates of candidates—needs to obtain a petition signed by only three percent of the NASD membership. By presenting a slate of candidates to the NASD membership, one of the candidates on the slate can in effect “coattail” on the endorsement obtained by the other members of the slate. This result both frustrates the purpose of the petition-making process (to gauge the support of an individual NASD candidate) and treats individual candidates seeking nomination through petitions the same as a slate of candidates. Therefore, the NASD's amendments, while continuing to recognize the validity of slate petitions, requires that the slate be endorsed by ten percent of the NASD's voting members. The NASD will retain the three percent standard for individuals. This modification is a reasonable attempt by the NASD to promote the fairness of its nomination process by limiting the ability of individual candidates to be nominated via a slate and without independent support, consistent with section 15A(b)(4) of the Act.

#### *Industry Segment Representation*

The NASD is proposing to amend Article VII, Section 4 of the NASD By-Laws to require representation by three additional Industry segments: a national retail firm, a regional retail or independent financial planning member firm, and a clearing firm, and to allow the Board, by resolution, to specify the criteria for representatives of national retail and regional retail or independent financial planning firms.

The Commission finds that this proposed change is consistent with sections 15A(b)(4) of the Act.<sup>25</sup> The Commission believes that this proposed amendment ensures that the NASD Board reflects the current constituencies of the securities markets and allows for representation by various categories of market participants within the NASD's membership ranks. Consequently, the Commission believes that NASD's proposal promotes fair representation, consistent with section 15A(b)(4).

#### *Other changes*

To conform the NASD By-Laws to the new NASD corporate structure and the change in the NASD-Nasdaq relationship, the NASD has determined to make three categories of additional changes to the By-Laws: (1) amendments reflecting the new corporate relationship between NASD and Nasdaq (e.g., NASD's proposed changes to Article VII, Section 9 of its By-Laws reflect that the NASD Regulation and Nasdaq Boards no longer will propose candidates to the NASD Board for appointment to the NNC); (2) references to the newly formed NASD Dispute Resolution subsidiary and deleted references to Nasdaq where no longer applicable (e.g., in Article IV, Section 1, NASD's proposal to add a reference to “NASD Dispute Resolution” in the membership agreement that must be signed by new NASD members);<sup>26</sup> (3) amendments to conform the NASD By-Laws to Delaware law (e.g., in Article VIII, Section 6, NASD's proposed amendment stating that a resolution for removal of officers of the NASD must be in writing, consistent with Delaware law). The Commission finds that these proposed changes are consistent with section 15A(b)(6) of the Act<sup>27</sup> in that they accurately reflect the NASD's new corporate structure and conform to applicable law.

The Commission finds good cause for approving proposed Amendments No. 3 and No. 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendments No. 3 and No. 4 clarifies the proposed rule change. Because these amendments do not significantly alter the original proposal, which was subject to a full notice and comment period, the Commission finds that granting accelerated approval to Amendments

No. 3 and No. 4 is consistent with section 19(b)(2) of the Act.<sup>28</sup>

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 3 and No. 4, including whether the proposed amendments are 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 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–06 and should be submitted by June 5, 2001.

#### **V. Conclusion**

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change (SR–NASD–2001–06), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>30</sup>

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

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**BILLING CODE 8010–01–M**

#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–44276; File No. SR–NSCC–2001–04]**

#### **Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Modify and Consolidate Clearing Fund Rules**

May 8, 2001.

Pursuant to Section 19(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

<sup>25</sup> 15 U.S.C. 78o–3(b)(4).

<sup>26</sup> See note 14, *supra*.

<sup>27</sup> 15 U.S.C. 78o–3(b)(6).

<sup>28</sup> 15 U.S.C. 78f(b)(2).

<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</sup> 17 CFR 200.30–3(a)(12).

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

<sup>24</sup> See note 9, *supra*.

Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on April 30, 2001, amended 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 parties.

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

NSCC seeks to modify and consolidate its clearing fund rules. As more fully described below, NSCC proposes to apply its current clearing fund requirements for settling members on surveillance (Addendum O) to all members and, for ease of reference, incorporate these requirements as well as the clearing fund requirements found in Addendum B into NSCC's Procedure XV.

### **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 these statements.<sup>2</sup>

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

Under current Addendum O,<sup>3</sup> NSCC collects additional clearing fund deposits from settling members on surveillance pursuant to a risk-based margining ("RBM") methodology that includes, but is not limited to, calculations based on portfolio volatility and, where applicable, market maker

domination. This rule filing would extend these RBM requirements to all NSCC members in lieu of Procedure XV's current allocation [Section A.I.(a)(i)(a)] and liquidation [Section A.I.(a)(i)(c)] clearing fund requirements.<sup>4</sup>

Since the Commission's approval of Addendum O in 1996, NSCC has studied the impact of RBM on member firms. NSCC found that utilization of RBM more accurately reflects NSCC's exposure than the current allocation and liquidation formulae because it enables NSCC to more precisely identify the risks posed by a member's unsettled portfolio and, as a result, more quickly adjust and collect additional clearing fund requirements. NSCC management therefore recommended, and the Membership and Risk Management Committee concurred, that RBM methodologies should be applied to all NSCC members, not just those on surveillance.

This rule change will modify Procedure XV as follows:

- With respect to clearing fund requirements for CNS transactions, Procedure XV's allocation [current Section A.I.(a)(i)(a)] and liquidation [current Section A.I.(a)(i)(c)] formulae will be replaced with RBM methodology, specifically volatility [new Section I.(A)(1)(a)] and market maker domination [new Section I.(A)(1)(c)] calculations, currently found in Addendum O. The volatility formula will continue to permit the NSCC to utilize any generally accepted portfolio volatility model to calculate volatility.

- In addition, the rule will continue to provide that NSCC may exclude from volatility calculations net unsettled positions in classes of securities whose volatility is (1) less amenable to statistical analysis, such as OTC Bulletin Board or Pink Sheet issues or issues trading below a designated dollar threshold (e.g., five dollars), or (2) amenable to generally accepted statistical analysis only in a complex manner, such as municipal or corporate bonds. The amount of clearing fund required with respect to these net unsettled positions will be determined by multiplying the absolute value of the net unsettled positions by a percentage designated by NSCC. This percentage will not be less than 10% with respect to the positions covered by item (1) above and will not be less than 2% with respect to the positions covered by item (2) above.

- The clearing fund requirements for all when-issued and when-distributed

transactions will be consolidated with the calculations for regular way transactions.

- The third prong of the CNS formula, the calculation of the difference between the contract price and the current market price of compared pending positions, will remain the same [current Sections I.(A)(i)(b) and I.(A)(2)(b)]; however, these calculations will be undertaken on a daily basis.

- All clearing fund and other deposit requirements will be required to be made by members within one hour of demand. However, to the extent a member is meeting its obligation with: (1) a deposit of cash, the cash deposit must be made by Federal Funds wire transfer and must be received no later than fifteen minutes prior to the close of the Federal Funds wire and (2) a delivery of eligible securities, the delivery of eligible securities must be received within the deadlines established by a qualified securities depository.<sup>5</sup> The proposed rule further provides that, at the discretion of NSCC, these cash deposits may be included as part of the member's daily settlement obligation.

- Addendum B, among other things currently specifies thresholds pursuant to which NSCC will require additional clearing fund contributions. Procedure XV [new Section II.(C)] will now provide that additional clearing fund deposits shall not be requested where the amount of the deficiency for a: (1) Member on Class A or B Surveillance is equal to or less than \$5,000 and such amount is less than 5% of such member's actual deposit; (2) member on Advisory Surveillance is equal to or less than \$20,000 and such amount is less than 5% of such member's actual deposit; or (3) member not on any surveillance is equal to or less than \$50,000 and such amount is less than 10% of the member's actual deposit.

- Other changes to Procedure XV result from relabeling and/or moving the placement of NSCC's clearing fund requirements without altering their substantive nature.

As described below, NSCC intends, subject to Commission approval, to begin implementing the proposed clearing fund changes on June 15, 2001, and to conclude by December 31, 2002.

Subject to Commission approval, members currently subject to Addendum O will be subject to these clearing fund changes on June 15, 2001. Applicants approved for NSCC membership from and after April 24, 2001, the date of this filing, will also be

<sup>2</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>3</sup> Addendum O was temporarily approved by the Commission in 1996 and approval has been extended consecutively on a temporary basis. Securities Exchange Act Release Nos. 37202 (May 10, 1996), 61 FR 24993 [File No. SR-NSCC-93-17]; 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]; 42864 (May 30, 2000), 65 FR 36204 [File No. SR-NSCC-99-09] (Commission approval date corrected in *Federal Register*, 65 FR 42065); and 44277 (May 8, 2001) [File No. NSCC-2001-05] (notice of filing and order granting accelerated approval of Addendum O through December 31, 2002).

<sup>4</sup> Procedure XV contains NSCC's clearing fund formulas.

<sup>5</sup> Under NSCC rules the only qualified securities depository is DTC.

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).