

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

Nasdaq is filing this proposed rule change as a "non-controversial" rule change under Rule 19b-4(e)(6)<sup>3</sup> because the proposed change: (1) will not significantly affect the protection of investors or the public interest; (2) will not impose any significant burden on competition; and (3) will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate. The SEC approved the substance of the change for Nasdaq National Market companies in Release 34-38961<sup>4</sup> and, in so doing, did not find that an exception for foreign issuers would affect impermissibly the protection of investors or the public interest. Similarly, the correction in this proposed rule change should not significantly affect the protection of investors or the public interest. Because the maintenance requirements approved by the SEC in Release 34-38961 will take effect for all issuers on the Nasdaq SmallCap Market on February 23, 1998, Nasdaq requests acceleration of the operative date of this proposed change to February 23, 1998. The Commission finds that it is consistent with the protection of investors and the public interest to permit the proposed rule change to become operative on February 23, 1998.

At any time within 60 days of the filing of the proposed 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 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, N.W., Washington, D.C. 20549. 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 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 the File No. SR-NASD-98-16 and should be submitted by March 20, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-5068 Filed 2-26-98; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-39693; File No. SR-NSCC-97-13]

### **Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Changes in Membership Standards**

February 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 30, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on December 31, 1997, 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 from interested persons on the proposed rule change.

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

The proposed rule change will amend NSCC's rules regarding membership standards to allow for consideration of applicants' and participants' regulatory history.

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

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

NSCC believes that when a person with significant managerial responsibility for a firm or who otherwise has significant ability to influence the policies and actions of a firm has a record that fails to reflect a history of good character, citizenship, commercial honor, and a respect for the letter and intent of the legal and regulatory structure in which the firm operates, there is an increased likelihood that the firm will present additional risk to NSCC's participants. Currently NSCC's rules provide that it will establish, as deemed necessary or appropriate, standards of financial responsibility, operational capability, experience, and competence for membership, as well as guidelines for the application of membership standards.<sup>3</sup> The purpose of the proposed rule change is to provide definition to the bases upon which NSCC may take action to deny an applicant membership or to cease to act for a participant by establishing specific membership standards for NSCC applicants and participants.<sup>4</sup>

The revised rule will allow NSCC to deny membership to any applicant or to cease to act for any participant when a person with significant managerial responsibility or with significant ability to influence the policies and actions of the applicant or participant (through ownership interest, contract, or otherwise), whether or not the person

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

<sup>3</sup> Rule 15 of NSCC's Rules and Procedures.

<sup>4</sup> NSCC has taken note of the findings set forth in the April 15, 1997, memorandum entitled, "The Joint Regulatory Sales Practice Sweep: Heightened Supervisory Procedures," which was the product of an initiative involving the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Securities and Exchange Commission, and the North American Securities Administrators Association, Inc.

<sup>3</sup> 17 CFR 240.19b-4(e)(6). In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

<sup>4</sup> SR-NASD-97-16 (Aug. 22, 1997), 62 FR 45895 (Aug. 29, 1997).

<sup>5</sup> 17 CFR 200.30-3(a)(12).

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

currently acts as a principal or registered representative, has a record that reflects:

(1) Any felony conviction or plea of guilty or nolo contendere, pending felony indictment, information of or other institution of felony proceedings, any investment-related<sup>5</sup> misdemeanor conviction or plea of guilty or nolo contendere, or pending investment-related misdemeanor;

(2) A permanent bar or temporary suspension from acting as a principal or registered representative or otherwise to be associated with or perform designated functions for a firm engaging in an investment-related business other than any temporary suspension for minor or technical violations;

(3) Other disciplinary or adverse regulatory or administrative actions (except for actions that are both isolated and minor) taken by any governmental, regulatory, or self-regulatory body or authority;

(4) Arbitrations, administrative proceedings, civil actions, or other proceedings not resolved in favor of the person except for proceedings that are both minor and isolated, including but not limited to proceedings ending in settlements involving a payment and proceedings that have not yet been adjudicated,<sup>6</sup> provided however that (a) unadjudicated proceedings brought by someone other than a regulatory authority shall not by themselves constitute grounds for NSCC to deny membership to an applicant or to cease to act for a participant and (b) unadjudicated proceedings brought by a regulatory authority shall not by themselves constitute grounds to cease to act for a participant but may constitute grounds to deny membership to an applicant;

(5) Multiple customer complaints;

(6) A termination or permitted resignation after an investigation or allegation of sales practice problems or violation of investment-related statutes, regulations, rules, or industry standards of conduct; or

(7) Being subject to heightened supervision in accordance with guidelines or recommendations promulgated by a regulatory authority.

any action, complaint, or proceeding referred to in the enumerated items above that is not taken against a person will nonetheless be deemed to be taken against that person if his or her

activities are cited in whole or in part as being a contributing cause.

Single instances under items (3) or (4) above may also be considered as part of the adverse regulatory history if there exists other instances of actions constituting an adverse regulatory history or if that single instance indicates that the person has a propensity to act in a manner that could cause significant financial cost to the applicant or participant. However, no person will be deemed to have an adverse regulatory history under items (4) or (5) above due to being named in customer complaints or adverse civil proceedings merely because of the person's management or ownership position in the applicant or participant (as opposed to actually engaging in wrongful conduct, including failure to supervise) unless the number of complaints or proceedings are disproportionate to the size of the firm.

The proposed rule will also allow NSCC to deny membership to an applicant or to cease to act for a participant if a correspondent of the applicant or participant or any entity for which the applicant or participant is financially responsible would fail to meet the above membership standards but only if the size of the business of the correspondent or other entity is significant relative to the capital of the applicant or participant.

NSCC intends to construe the new rule so as to not limit its authority to deny membership to, to cease to act for, or to obtain further assurances from any applicant or participant in accordance with the NSCC's rules and procedures when the circumstances warrant even if such circumstances include or consist solely of items that are specifically not grounds for such action under the proposed rule. For example, any unadjudicated proceeding that could create significant financial difficulties for an applicant or participant may be grounds for such action even if it would not constitute adverse regulatory history as defined in the proposed rule.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>7</sup> and the rules and regulations thereunder because it will clarify the rules of NSCC relating to standards required for membership and thereby 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 impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

NSCC received one comment letter on the proposed rule change.<sup>8</sup> NSCC will notify the Commission of any other written comments it receives.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Acting**

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, N.W., Washington, D.C. 20549. 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, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should

<sup>5</sup> The term "investment-related" pertains but is not limited to securities, commodities, banking, insurance, or real estate.

<sup>6</sup> The term "adjudicated" for purposes of the rule means any arbitration, proceeding, or action that has been resolved subject to appeal, whether or not the resolution has been stayed pending appeal.

<sup>7</sup> 15 U.S.C. 78q-1.

<sup>8</sup> Letter from William C. Alsover, President, Centennial Securities Company, to David F. Hoyt, NSCC (November 7, 1997).

refer to File No. SR-NSCC-97-13 and should be submitted by March 20, 1998.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-5067 Filed 2-26-98; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings, Agreements Filed During the Week Ending February 20, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* OST-98-3538.

*Date Filed:* February 19, 1998.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC2 AFR 0027 dated January 30, 1998, Within Africa Resolutions 1-27, Minutes—PTC2 AFR 0026 dated January 27, 1998, Tables—PTC2 AFR Fares 0013 dated February 13, 1998, Correction—PTC2 AFR 0028 dated February 6, 1998, PTC2 AFR 0029 dated February 13, 1998, Intended effective date: April 1, 1998.

*Docket Number:* OST-98-3539.

*Date Filed:* February 19, 1998.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC12 NMS-AFR 0034 dated February 3, 1998, North Atlantic-Africa Reso 311g, Intended effective date: May 1, 1998.

*Docket Number:* OST-98-3540.

*Date Filed:* February 19, 1998.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC12 MEX-EUR 0014 dated January 30, 1998, Mexico-Europe Resolutions 1-23, Minutes—PTC12 MEX-EUR 0015 dated February 13, 1998, Tables—PTC12 MEX-EUR Fares 0005, dated January 30, 1998, Intended effective date: May 1, 1998.

*Docket Number:* OST-98-3541.

*Date Filed:* February 19, 1998.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC12 NMS-AFR 0035 dated February 3, 1998, North Atlantic-Africa Resolutions 1-22, Intended effective date: May 1, 1998.

**Paulette V. Twine,**

*Federal Register Liaison.*

[FR Doc. 98-5057 Filed 2-26-98; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 20, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST-98-3491.

*Date Filed:* February 17, 1998.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* March 17, 1998.

*Description:* Application of Polar Air Cargo, pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, requests an amendment to its certificate of public convenience and necessity for Route 727 authorizing polar to engage in scheduled foreign air transportation of property and mail between any point or points in the United States and two points in Japan, and beyond each of those points to one point, with full traffic rights between all points on the route, and to integrate these operations with all services Polar is otherwise authorized to conduct pursuant to its exemption and certificate authority consistent with applicable international agreements.

*Docket Number:* OST-98-3510.

*Date Filed:* February 18, 1998.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* March 18, 1998.

*Description:* Application of Consorcio Aviaca, S.A. de C.V., pursuant to 49 U.S.C. Section 41302 and Subpart Q, applies to amend its foreign air carrier permit application to engage in scheduled foreign air transportation of persons, property and mail between points in Mexico and points in the United States, and subject to applicable regulations of the Department, between points in the United States and other points worldwide.

**Paulette V. Twine,**

*Federal Register Liaison.*

[FR Doc. 98-5058 Filed 2-26-98; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[USCG-1998-3481]

### Navigation Safety Advisory Council

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The Navigation Safety Advisory Council (NAVSAC) will meet to discuss various issues relating to commercial and recreational boat safety. The meetings are open to the public.

**DATES:** NAVSAC will meet on Saturday, March 21, 1998, from 8 a.m. to 5 p.m. and on Sunday, March 22, 1998, from 8 a.m. to 3 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before March 13, 1998.

**ADDRESSES:** NAVSAC will meet at the Holiday Inn Select, 111 West Fortune Street, Tampa, FL 33602. Send written material and requests to make oral presentations to Margie G. Hegy, Commandant (G-M-2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

**FOR FURTHER INFORMATION CONTACT:** Margie G. Hegy, Executive Director of NAVSAC, telephone (202) 267-0415, fax (202) 267-4700, or Diane Schneider, NAVSAC Executive Secretary, telephone (202) 267-0352.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

### Agenda of Meeting

The agenda includes the following:

- (1) Monterey Bay National Marine Sanctuary Panel efforts to determine what, if any, vessel regulations are needed to protect Sanctuary resources.
- (2) Vessel Traffic Information Services (VTIS) in Tampa.
- (3) Vessels that lose propulsion or experience steering problems during transit.
- (4) Permitting of Artificial Reefs.
- (5) Waterways Management Workshop.

### Procedural

All sessions are open to the public. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than March 13, 1998. If you would like a copy of your material distributed to each member of the Council or Committee in advance of the meeting, please submit 25 copies to

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