

policies of the registered investment company involved and the purposes of the Act. PaineWebber requests an exemption from sections 17(a)(1) and (2) to permit the Trusts to purchase Treasuries from PaineWebber.

3. PaineWebber states that the policy rationale underlying section 17(a) is the concern that an affiliated person of an investment company, by virtue of this relationship, could cause the investment company to purchase securities of poor quality from the affiliated person or to overpay for securities. PaineWebber argues that it is unlikely that it would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasury market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. PaineWebber argues that because it is one of a limited number of primary dealers in Treasuries, it will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. PaineWebber states that it is only seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an ongoing course of business. Consequently, investors will know before they purchase a Trust's Securities the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided periodically by the Treasuries to the Trust and distributed to Holders. PaineWebber also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid on the Contracts. PaineWebber argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction in the amount that they would be paid on the Contracts.

5. PaineWebber believes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, that the proposed transaction is consistent with the policy of each of the Trusts, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes

fairly intended by the policies and provisions of the Act.

Applicant's Conditions

PaineWebber agrees that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including majority of the trustees who are not interested persons of the Trust, (i) will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (ii) will make and approve such changes as deemed necessary; and (iii) will determine that the transactions made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (i) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications to such procedures), and (ii) will maintain and preserve for the longer of (a) the life of the Trusts and (b) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from PaineWebber, setting forth a description of the Treasuries purchased, the identity of the seller, the terms of the purchase, and the information or materials upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its Securities.

5. The terms of the transactions will be reasonable and fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the Trust or the Holders of Securities of the Trust on the part of any person concerned.

6. The fee, spread, or other remuneration to be received by PaineWebber will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction is at least as favorable as that available from other sources. This will include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40081; File No. SR-NSCC-97-07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Changes in Membership Standards

June 10, 1998.

On August 5, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSCC-97-07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on September 29, 1997.² Four comment letters were received.³ For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change revises NSCC's financial membership standards

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 39110 (September 22, 1997), 62 FR 50978.

³ Letters from William C. Alsover, President, Centennial Securities Company (October 29, 1997); John G. Woodhead, President, Phelps & Woodhead, Inc. (January 8, 1998); Ronald E. Berti, Secretary-Treasurer, Wall Street Equities, Inc. (January 15, 1998); and Robert P. VanderWal, President, Peninsular Securities Company (March 2, 1998).

imposed on its broker-dealer members. Specifically, the rule change (1) increases NSCC's capital requirements for full service members from \$50,000 in excess net capital to \$500,000 in excess net capital except for municipal securities brokers' brokers⁴ for which NSCC's capital requirement will be increased from \$50,000 in excess net capital to \$100,000 in excess net capital and (2) increases NSCC's capital requirements for members that clear for other broker-dealers from \$50,000 in excess net capital to \$1,000,000 in excess net capital.⁵

NSCC's current excess net capital requirements were implemented in 1976 when NSCC was formed. Trading volumes and the average value of securities traded have increased significantly since then. The Commission also has changed its minimum net capital requirements for most NSCC members during this time period from \$25,000 to \$250,000.⁶

As of the end of 1997, twenty-six out of the approximately 350 NSCC members would not have met a \$500,000 standard for full service members.⁷ For this reason, the \$500,000 standard will become effective on September 29, 1998, which is one year after the date of publication in the **Federal Register** of the Commission's notice of this rule change.⁸

As of the end of 1997, two out of approximately one hundred NSCC members that clear for other broker-dealers would not have met a \$1,000,000 standard.⁹ For this reason, NSCC has agreed that the effective date of the \$1,000,000 standard will be on September 29, 1998, in order to coincide with that of the \$500,000 standard.¹⁰

⁴ "Municipal securities brokers' broker" is defined in Rule 15c3-1(a)(8) under the Act. 17 CFR 240.15c3-1(a)(8).

⁵ Excess net capital is the amount of net capital a broker-dealer has in addition to that required by the Commission's uniform net capital rule. The Commission's uniform net capital rule is set forth in Rule 15c3-1 under the Act. 17 CFR 240.15c3-1.

⁶ 17 CFR 240.15c3-1(a)(2)(i).

⁷ Telephone conversation between Peter J. Axilrod, Managing Director, NSCC, and Theodore R. Lazo, Attorney, Division of Market Regulation, Commission (February 9, 1998).

⁸ The \$100,000 standard applicable to municipal securities brokers' brokers also will become effective on September 29, 1998.

⁹ *Supra* note 7.

¹⁰ Conversation between Karen L. Saperstein, Deputy General Counsel, NSCC, and Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (June 9, 1998). NSCC originally intended to make the \$1,000,000 standard effective on the later of six months from the date of publication in the **Federal Register** of the notice of the filing or the date of Commission approval of the rule change.

II. Comment Letters

The Commission received four comment letters. Three of the commenters stated that they believe the increase in the excess net capital requirement from \$50,000 to \$500,000 is unnecessarily high although one of these commenters agreed that NSCC should increase its excess net capital requirement. In addition, these three commenters stated that they settle their trades in a timely fashion and that they should not be placed in the same category of risk with unreliable firms. One of these commenters also stated that it believed that each member of NSCC should be evaluated on its own merit. The fourth commenter stated that it fully supports the increase to NSCC's excess net capital requirement and objected, as discussed below, only to the proposed effective dates.

Two of the four commenters (one that opposed the increase and the one that supported it) stated that they believe that the increase in the excess net capital requirement to \$500,000 should be implemented over a longer period of time than NSCC proposed. One of these two commenters stated that the increase should take effect after twelve months notice and then be phased in over an additional twelve month period. The other commenter (the one in favor of the increase) stated that NSCC's increase in required excess net capital should be implemented in three steps over a one year period after Commission approval. None of the commenters discussed the implementation of the \$1,000,000 standard for NSCC members that clear for other broker-dealers.

III. Discussion

Section 17A(b)(3)(F) of the Act¹¹ requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that NSCC's proposed rule change is consistent with its obligations under Section 17A(b)(3)(F) because it will help to ensure that only entities that are highly capitalized will be allowed to be members of NSCC. As a result, NSCC should be able to reduce the payment-related risks associated with its clearing operations.

In addition, under the standards that the Commission's Division of Market Regulation has published regarding registration of clearing agencies, a clearing agency may impose on its participants financial standards which

are higher than those already imposed by applicable federal and state regulations if it deems such higher standards necessary to protect the clearing agency and its participants from unreasonable risks.¹² Because the Commission believes that NSCC's proposed rule change establishes reasonable standards of financial responsibility carefully designed to protect NSCC and its participants from unreasonable risk while still providing for broad access to its services, the Commission believes that the proposed rule change is consistent with the requirements of the Act.

Contrary to the commenters' suggestions, the Commission believes that the amount of the increase to NSCC's excess net capital requirement is reasonable and appropriate. Furthermore the Commission does not believe that NSCC should be obligated to evaluate excess net capital requirements on a case by case basis because such an evaluation could be contrary to the requirement contained in Section 17A(b)(3)(F) of the Act¹³ that a clearing agency's rules not be designed to permit unfair discrimination in the admission of participants. The Commission further believes that NSCC should be permitted to institute the increase to its excess net capital requirements on a timely basis and that the rule change is being phased in over a sufficient period of time to allow NSCC's members to comply with the increased excess net capital requirements.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of 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 change (File No. SR-NSCC-97-07) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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¹² Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁴ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78q-1(b)(3)(F).