

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 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 Exchange. All submissions should refer to File No. SR-NASD-98-23 and should be submitted July 10, 1998.

#### IV. Conclusion

For the foregoing reasons, the Commission finds that NASD Regulation's proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule change (SR-NASD-98-23) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

**Jonathan G. Katz,**

Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40086; File No. SR-NSCC-98-4]

#### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Adopting an Interpretation of the Board of Directors Regarding NSCC's Obligation to Continuously Review Participants to Determine if Participants Are Required to Reapply for Membership Due to a Material Change in Conditions

June 12, 1998.

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, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-98-4) 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 would add Addendum T to NSCC's Rules and Procedures regarding NSCC's obligation to continuously review participants to determine if they are required to reapply for membership due to a material change in conditions. A copy of proposed Addendum T is attached as Exhibit A to the rule filing.

#### 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

Under the proposed rule change, NSCC will be permitted to (i) reexamine a participant who has undergone a material change in circumstances,<sup>3</sup> (ii) reconsider the participant's continuing status as a participant as if such entity was initially applying for membership when conditions originally in existence at the time a participant was accepted for membership have materially changed, and (iii) require the participant to satisfy any concerns NSCC may have

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

<sup>3</sup> Proposed Addendum T sets forth three categories where changes may warrant reconsideration: (1) material changes in ownership, control of management, (2) material changes in business lines, including but not limited to, new business lines undertaken, or (3) participation as a defendant in litigation which could reasonably have a direct negative impact on the participant's business. Proposed Addendum T states that these categories are listed as examples and should not be viewed as exclusive in the process.

as to the participant's ongoing membership in NSCC as part of such reevaluation. In addition, Addendum T explicitly states that participants have the affirmative obligation to advise NSCC if such material change occurs.

Under the Act and the rules and regulations thereunder, NSCC is obligated to safeguard securities and funds in the possession and control. NSCC believes that this obligation, coupled with the fact that NSCC is the guarantor of participants' transaction submitted to it for clearance and settlement, require that NSCC have flexibility to consider material changes pertaining to such participants and have the ability to take appropriate steps in light of such changes.

When a material change occurs with respect to an existing participant's ownership, control or management, mix of business, use of third party service provides, or regulatory history, among other areas, NSCC is faced with a different risk perspective than that which it faced at the time it approved such participant's application for membership. The NSCC board has concluded that it is in the best interests of NSCC and its membership as a whole that NSCC address these types of changes, including the ability to require the participants to reapply for membership, as if the participant was not already a participant.

NSCC believes that participants change their business mix as their focus in the financial industry change. According to NSCC, enter new businesses, discontinue old ones, change management, change risk policies, or take other actions or steps which could result in an entirely different entity (other than changing the corporate name of such entity) from the one which was approved for NSCC membership. NSCC believes that if it did not have the ability to continually reexamine participants' status, the purpose behind scrutinizing applications and the comfort level provided by such process, would be undermined.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will clarify the rules of NSCC relating to the continuing standards required for membership and NSCC's obligation to safeguard securities and fund within its control.

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

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

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 17 CFR 200.30-3(a)(12) (1994).

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

not necessary to 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*

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**

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 NSCC 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 refer to File No. SR-NSCC-98-3 and should be submitted by July 10, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Jonathan G. Katz,**  
*Secretary.*

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<sup>4</sup> 17 CFR 200.30-3(a)(12).

Underlined, boldface text indicates additions

Modify NSCC's Rules as follows:

#### ADDENDUM T

##### INTERPRETATION OF THE BOARD OF DIRECTORS CONTINUING RESPONSIBILITY OF THE CORPORATION

National Securities Clearing Corporation (the "Corporation") is a self-regulatory organization under the Securities Exchange Act of 1934, as amended, and as such has, among others, the obligation to enforce compliance with its rules by its participants. Compliance by participants with the Rules of the Corporation helps to ensure that the Corporation is able to safeguard securities and funds in its possession and to fulfill its obligation as a guarantor of participant's transactions in the Corporation's clearance and settlement systems.

The Corporation's Rules and Procedures establish criteria which applicants must meet to become participants as well as criteria and requirements with respect to continuance, including the ability of the Corporation to require additional assurances as to a participant's ability to meet its commitments as they come due. To fulfill its obligation to ensure the continued eligibility of a clearing participant to utilize the services of the Corporation, the Corporation has employed, among other techniques, a myriad of computerized surveillance programs and interfaces with marketplace self-regulatory organizations and other clearing corporation and depositories.

For more than a decade, the Corporation has recognized that conditions in existence at the time the applicant is accepted for membership may materially change either before the participant has started or subsequent thereto. The Corporation has further recognized that such change in conditions may result in a material change in the firm's risk profile, as determined by the Corporation, thus issues of safety and soundness may cause the Corporation to consider addressing anew the continued membership of some existing participants.

The Board of Directors of the Corporation has determined to clarify, for all concerned, the types of events which may warrant a reconsideration by the Corporation of a participant's continued use of the Corporation's services, beyond simply those circumstances dealing with the immediate ability of a

participant to meet its obligations as they come due (which are already definitively spelled out in the Corporation's Rules). Three categories where changes may warrant reconsideration are listed below as examples and should not be viewed exclusive in the process:

- material changes in ownership, control or management;
- material changes in business lines, including but not limited to, new business lines undertaken; or
- participation as a defendant in litigation which could reasonably have a direct negative impact on the participant's business.

In addition to the above, a firm may fail to meet current entrance standards, whether or not those standards were in effect at the time the firm was admitted. This may, for instance, be due to the development of operational problems or the advent of an adverse regulatory history of the type that would disqualify the firm from initial membership under then current standards.

In the event of the occurrence of any of the above conditions, the Corporation may, among other actions:

- a. require that the participant present testimony, facts and/or evidence sufficient to address, to the satisfaction of the Corporation, concerns or questions it may have as to the appropriateness of the participant continuing as such;
- b. impose new requirements of a financial or operational nature upon the participant; and/or
- c. require the participant to be presented to the Corporation for formal reconsideration of its continued membership as if it were initially applying under then current membership standards (with an adverse determination requiring a reasonable time-frame for the participant to make other clearing arrangements).

All such actions will continue to be subject to appeal, pursuant to the rules of the Corporation. To assist the process of identifying and addressing changes at existing participants, each participant shall have an affirmative duty to notify the Corporation of conditions which may fall within the above categories. Failure to so notify the Corporation shall be deemed, in and of itself, to be a violation of the Corporation's Rules and therefore subject to sanctions.