

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others**

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 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 the proposed rule change, or

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

**VI. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-95-06 and should be submitted by March 31, 1995.

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

**Jonathan G. Katz,**

*Secretary.*

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[Release No. 34-35442; File No. SR-NSCC-95-02]

**Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Provide a One Day Settling Capability**

March 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> notice is hereby given that on January 24, 1995, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-95-02) as described in Items I and II below, which items have been prepared primarily by NSCC. On January 31, 1995, and March 1, 1995, NSCC filed amendments to the proposed rule change.<sup>2</sup> The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The purpose of the proposed rule change is to modify NSCC's rules and procedures in order to provide a one day settling capability for trades that are compared or recorded one day prior to normal settlement date and thereafter. The proposed rule also will revise NSCC's trade guarantee to provide that NSCC will guarantee one day settling items at the time that NSCC completes the trade comparison process for trades which NSCC compares or the trade recording process for trades which NSCC receives in a lock-in capacity.

**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 that 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>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> Letters from Karen Saperstein, General Counsel, NSCC, to Jerry Carpenter, Assistant Director, Office of Securities Processing, Division of Market Regulation, Commission (January 31, 1995 and March 1, 1995).

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

(a) In the current environment where trades are settled five business days after the trade ("T+5"), trades that are compared or recorded at NSCC after the third business day after the trade date ("T+3") do not settle until two days later. Thus, a trade which is compared or is recorded on T+4 is not included in the normal settlement cycle for settlement on T+5. NSCC's system assigns a new settlement date to these items which is two business days after the trade is compared or recorded, which in this case would be T+6. Under this processing system, when the T+3 settlement cycle is implemented, trades which are compared or recorded on T+2 would not settle until T+4.<sup>3</sup> Without a change in this process it is estimated that a substantial number of transactions could miss timely settlement.

In order to allow as many compared trades as possible to settle in a normal cycle, NSCC proposes to provide a processing capability that will permit items processed one day prior to the normal settlement day or later to settle the next business day instead of settling two business days after processing. This enhancement will be implemented first in the processing of trades settling in the five day settlement cycle and will include trades processed on T+4 prior to the cut off time, which initially will be 9:00 p.m.<sup>4</sup> T+4, trades processed prior to the daily cut off time also will be subject to next day settlement. Trades processed after the daily cut off time will continue to settle two business days following comparison or recordation. Transactions in securities which are not eligible for NSCC's Continuous Net Settlement ("CNS") system received prior to the cut off time on T+4 (in a T+5 settlement cycle) or on T+2 (in a T+3 settlement cycle) will be processed on a trade for trade basis for settlement the next business day.

One day settling items will be reported back to members on the morning of the settlement day in a separate section of the Consolidated Trade Summary ("CTS"). Unlike other trades listed on the CTS, these trades

<sup>3</sup> On October 6, 1993, the Commission adopted Rule 15c6-1 which became effective June 7, 1995, establishes T+3 as the standard settlement cycle. Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (order approving Rule 15c6-1); 34952 (November 9, 1994), 59 FR 59137 (order changing the effective date of Rule 15c6-1).

<sup>4</sup> In a T+3 settlement environment, one day settlement will be provided for any transaction processed on T+2 prior to the cut off time.

will be shown as individual items instead of as net positions.<sup>5</sup> No contract output will be provided for one day settling items. Currently, a member's obligation to receive and pay for CNS securities is fixed at the time the CTS is made available to the member. With respect to obligations due to settle that day, the obligation of a member to receive and pay for CNS securities and the obligation of a member to deliver CNS securities will be fixed at the time NSCC completes CNS processing.

CNS transactions received or compared on T+4 prior to cut off time in a T+5 cycle or on T+2 in a T+3 cycle will be included in either the night time allocation cycle or the day time allocation cycle depending on when the data is received from the marketplace or member. Positions which remain open after the evening cycle may be changed as a result of one day settling trades. To avoid creating a customer segregation problem for members with respect to short positions first appearing as compared on settlement day, all one day settling CNS items will automatically be exempted from CNS delivery to the extent they create or increase an existing short position. Members will have the ability through daily instructions to override this exemption for specific issues or through standing instructions to override this exemption for all issues. The proposal also will prohibit members with a long position to which an exercise privilege attaches from submitting an exercise notice with respect to one day settling items.

Currently, NSCC guarantees the settlement of CNS trades as of midnight of the day they are reported to members as compared and the settlement of non-CNS trades from the morning of T+4 through and including T+5. Since one day settling items will appear on the CTS initially on T+5 settlement day, they could settle before midnight of the day they are first reported as compared (*i.e.*, CNS trades could settle before the guarantee becomes effective). NSCC believes that one day settling transactions should receive the same guarantee of completion as other trades settling the same day. Accordingly, a secondary purpose of the rule proposal is to revise NSCC's trade guarantee rules to provide that for CNS one day settling

<sup>5</sup> The CTS will continue to indicate a net position of CNS and non-CNS trades scheduled to settle the next business day and also will show individual positions in all one day settling items scheduled to settle that day. The member's actual settlement position of that day will be a combination of the net positions reported the day before and the one day settling items reported that day on the CTS. Settlement of the one day settling items may occur prior to the issuance of the CTS reporting such trades.

items, the guarantee will be effective at the time NSCC completes the trade comparison process for trades which NSCC compared or at the time NSCC completes the trade recording process for trades which NSCC receives in a locked-in capacity.<sup>6</sup> With respect to non-CNS one day settling items, NSCC will guarantee such trades from completion of comparison or recording through T+5. If a party to a one day settling trade is a member of an interfacing clearing corporation, such guarantee will not be applicable unless an agreement to guarantee such trade exists between NSCC and the interfacing clearing corporation.

Additionally, the proposal provides that transactions in securities which are subject to a voluntary corporate reorganization, have a trade date on or before the expiration of the voluntary corporate reorganization, and are compared or received after T+3 and at least one day prior to the end of the protect period<sup>7</sup> will be processed on a trade-for-trade basis. The proposal also includes certain technical corrections to NSCC's rules and procedures by deleting any reference to the National Institutional Settlement System ("NISS") or TAD<sup>8</sup> and by reclassifying Miscellaneous Delivery Order ("MDO") as simply a Delivery Order ("DO").

The primary purpose of the rule change is to modify NSCC's rules and procedures in order to provide a one day settling capability. NSCC believes that members should have the opportunity to become familiar with this new settlement feature before T+3 is implemented. Accordingly NSCC plans to implement this enhancement while still in the T+5 cycle.

(b) NSCC believes the proposed rule change is consistent with the requirements of the Act, specifically section 17A of the Act, and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of securities transactions.

<sup>6</sup> This guarantee applies to all trades that settle on the next business day. For example, trades processed on T+5 prior to the cut off time will be guaranteed at that time. A trade processed on T+5 after cut off time, however, will still be guaranteed as of midnight of the day it is reported.

<sup>7</sup> The protect period is a period during which NSCC provides protection to members' positions in securities that are subject to a voluntary reorganization. The protect period begins two business days before the expiration date of a tender offer through such time as NSCC determines, which generally is five business days after the date of the tender offer.

<sup>8</sup> These references are no longer needed because they represent defunct organizations.

### *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 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**

Section 17A(b)(3)(F)<sup>9</sup> of the Act requires the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that NSCC's one day settling capability should help promote prompt and accurate clearing and settlement because it will increase the number of trades that are included in the normal settlement cycle. Thus, the number of failed trades and the time required for settlement should be reduced.

As discussed above, as of June 7, 1995, a new settlement cycle of T+3 will be mandated by Commission Rule 15c6-1. The Commission believes that settlement of trades in a shorter time frame will reduce risk to the securities market, including risk to clearing corporations as a result of member failure. Without a one day settling feature, it is possible that many trades may fail to settle according to this settlement time frame. Thus, the proposal is consistent with Section 17A(b)(3)(F)<sup>10</sup> of the Act in that it should enhance NSCC's ability to safeguard securities and funds under its control.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because participants should have the opportunity to become familiar with the one day settling capability prior to the implementation of T+3 settlement.

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

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 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, 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 the file number SR-NSCC-95-02 and should be submitted by March 31, 1995.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-95-02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jonathan G. Katz,**  
Secretary.

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[Release No. 34-35454; File No. SR-NASD-94-62, Amendment No. 2]

**Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Limit Order Protection for Member-to-Member Limit Order Handling on Nasdaq**

March 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 7, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The NASD recently proposed to amend SR-NASD-94-62 relating to limit order protection for member-to-member limit order handling in The Nasdaq Stock Market.<sup>1</sup> Currently, the NASD's Interpretation to the Rules of Fair Practice<sup>2</sup> makes it a violation of just and equitable principles of trade for a member firm to trade ahead of its own customer's limit orders. That amendment clarified that the "terms and conditions" exception to the Interpretation applies only to limit orders from institutional accounts, whether such limit orders come from a firm's own customers or are member-to-member limit orders. The term "institutional account" is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice.<sup>3</sup> The NASD now is proposing to amend the proposed rule change to provide that the "terms and conditions" exception to the Interpretation also applies to limit orders that are 10,000 shares or more, unless such orders are less than \$100,000 in value, as well as to limit orders from institutional accounts. Below is the text of the proposed rule change. Proposed new language, including the language that was added in the original proposal, is italicized; language to be deleted is bracketed.

**Limit Order Protection Interpretation to Article III, Section 1 of the NASD Rules of Fair Practice**

To continue to ensure investor protection and enhance market quality, the NASD Board of Governors is issuing an Interpretation to the Rules of Fair Practice dealing with member firm treatment of [their] customer limit orders in Nasdaq securities. This Interpretation will require members acting as market makers to handle [their] customer limit orders with all due care so that market makers do not "trade ahead" of those limit orders. Thus, members acting as market makers that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal

or superior to that of the limit order without executing the limit order, provided that, prior to September 1, 1995, this prohibition shall not apply to customer limit orders that a member firm receives from another member firm and that are greater than 1,000 shares. Such orders shall be protected from executions at prices that are superior but not equal to that of the limit order. In the interests of investor protection, the NASD is eliminating the so-called disclosure "safe harbor" previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.

**Interpretation**

Article III, Section 1 of the Rules of Fair Practice states that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

The Best Execution Interpretation states that: In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions. Failure to exercise such diligence shall constitute conduct inconsistent with just and equitable principles of trade in violation of Article III, Section 1 of the Rules of Fair Practice.

In accordance with Article VII, Section 1(a)(2) of the NASD By-Laws, the following interpretation under Article III, Section 1 of the Rules of Fair Practice has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from a customer (whether its own customer or a customer of another member) in a Nasdaq security and that continues to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order, [under the specific terms and conditions by which the order was accepted by the firm,] shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Article III, Section 1 of the Rules of Fair Practice, provided that, until September 1, 1995, customer limit orders in excess of 1,000 shares received from another member firm shall be protected from the market maker's executions at prices that are superior but not equal to that of the limit order,

<sup>1</sup> See Securities Exchange Act Release No. 35391 (Feb. 16, 1995), 60 FR 9878 (Feb. 22, 1995). Notice of the proposed rule change, together with the substance of the proposal as initially filed, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35122, Dec. 20, 1994) and by publication in the **Federal Register** (59 FR 66389, Dec. 23, 1994).

<sup>2</sup> NASD Manual, Rules of Fair Practice, Art. III, Sec. 1 (CCH) ¶ 2151.07.

<sup>3</sup> NASD Manual, Rules of Fair Practice, Art. III, Sec. 21 (CCH) ¶ 2171.

<sup>11</sup> 17 CFR 200.30-3(a)(12) (1994).