

criteria for PIAC review for substandard performance in any one objective measure, currently set at two out of three consecutive review periods, is being reduced to any one review period of substandard performance. The criteria for MPC review of substandard performance in any one objective measure, currently set at three out of four review periods, is being changed to two out of three consecutive review periods of substandard performance, while MPC review for substandard overall performance, currently set at two out of three review periods, is being changed to any one review period of substandard performance. The Commission believes that as the proposal increases the possibility of the institution of a performance improvement action as a result of substandard performance, it should help motivate and provide an incentive for specialists to maintain high levels of market making performance. In addition, the changes should help the Exchange to identify earlier those specialists needing help or guidance in improving their performance either overall or in a particular area.

In conclusion, although the Commission believes that the proposed modifications will increase the effectiveness of the BSE's SPEP, the Exchange should continue to evaluate means to strengthen its performance oversight program, with an emphasis on incorporating additional objective measures and including competing specialist activity into the SPEP.<sup>19</sup>

For the reasons discussed above, the Commission finds that the BSE's proposal to modify its SPEP pilot program is consistent with the requirements of Sections 6 and 11 of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5)<sup>20</sup> requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and

<sup>19</sup> In this regard, the Commission notes the Exchange's proposed rule change states that it is currently engaged in an effort to develop other measures of performance for inclusion in the SPEP, and hopes to file for additional modifications to the program in the near future. Moreover, in connection with the permanent approval of the BSE's Competing Specialist Initiative, the Exchange represented that it was in the process of revising its SPEP standards to include competing specialist activity as well as other market quality initiatives and planned on submitting rule amendments during the current extension of the SPEP pilot. See Letter from John I. Fitzgerald, Executive Vice President, BSE, to Howard Kramer, Associate Director, SEC, dated February 29, 1996.

<sup>20</sup> 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Further, the Commission finds that the proposal is consistent with Section 11(b) of the Act<sup>21</sup> and Rule 11b-1 thereunder which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and perfect the mechanism of a national market system.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule change (SR-BSE-96-05) is approved.

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-37582; File No. SR-NSCC-96-14]

#### **Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Regarding the Use of Letters of Credit as Clearing Fund Collateral**

August 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> notice is hereby given that on July 25, 1996, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") 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 persons.

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

With the proposed rule change, NSCC is seeking permanent approval of certain clearing fund contributions requirements.

<sup>21</sup> 15 U.S.C. 78k(b).

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

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

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

#### **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**

On January 31, 1990, the Commission approved on a temporary basis a proposed rule change filed by NSCC which modified the amount of a member's clearing fund required deposit that may be collateralized by letters of credit.<sup>3</sup> Specifically, the rule change increased the minimum cash contribution for those members which use letters of credit to collateralize their open account indebtedness from \$50,000 to the greater of \$50,000 or 10% of their clearing fund required deposit up to a maximum of \$1,000,000. In addition, the rule change provided that only 70% of a member's required deposit may be collateralized with letters of credit. The rule change also added headings to the clearing fund formula section for clarity and made other non substantive drafting changes. The goal of the rule change was to increase the cash liquidity of the clearing fund and to limit NSCC's exposure to any unusual risk from the reliance on letters of credit. When NSCC first filed this change the intent was to improve NSCC's liquidity resources by requiring additional deposits of cash and cash equivalents. Since that time NSCC has obtained additional liquidity resources through a line of credit with three major New York clearing house banks. Currently, NSCC has a four hundred million dollar line of credit

<sup>2</sup> The Commission has modified parts of these statements.

<sup>3</sup> The proposed rule change was originally filed on October 27, 1989, and was approved temporarily through December 31, 1990. Securities Exchange Act Release No. 27664 (January 31, 1990), 55 FR 4297 [File No. SR-NSCC-89-16]. Subsequently, the Commission granted a number of extensions to the temporary approval to allow the Commission and NSCC sufficient time to review and to assess the use of letters of credit as clearing fund collateral. Most recently, the Commission extended temporary approval through September 30, 1996. Securities Exchange Act Release No. 36360 (October 11, 1995), 60 FR 53945 [File No. SR-NSCC-95-12].

that can be used for liquidity purposes, and letters of credit in the NSCC clearing fund are available as collateral for this line of credit. As of June 28, 1996, NSCC's clearing fund had a total value of \$769,062,580 and consisted of approximately 39.4% cash, approximately 29.2% qualifying securities, and approximately 31.4% letters of credit. Of NSCC's 379 members with clearing fund deposits, fifty-two members use letters of credit to collateralize a portion of their clearing fund required deposit. Only one member's use of a letter of credit reaches the maximum permissible portion of its clearing fund required deposit. Since NSCC began accepting letters of credit for clearing fund purposes, NSCC has never drawn on a member's letter of credit for any reason. NSCC believes that it has adequate liquidity resources and requests permanent approval of the change limiting letters of credit use to no more than 70% of the member's deposit.

Because the proposed rule change relates to NSCC's capacity to safeguard securities and funds in its custody or control and to protect the public interest, it is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to NSCC.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule will have an impact 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 received since the last filing. NSCC will notify the Commission of any written comments received.

#### 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 reason 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. 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR-NSCC-96-14 and should be submitted by September 16, 1996.

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-37583; File No. SR-PSE-96-25]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Listing and Trading of FLEX Equity Options**

August 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 16, 1996, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") 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 by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

The Exchange proposes to amend its rules respecting the listing and trading of FLEX Equity Options in order to add a provision on the formation of contracts that was inadvertently omitted from the original proposal. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

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

On February 14, 1996, the Commission approved an Exchange proposal to establish rules on the listing and trading of FLEX Equity Options on the Exchange.<sup>3</sup> The Exchange is now proposing to amend those rules in order to add a section on the formation of contracts that was inadvertently omitted from the proposal as filed with the Commission.<sup>4</sup> The Exchange notes that the proposed addition is consistent with Rule 24A.5(c)(iii) of the Chicago Board Options Exchange, Incorporated.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of

<sup>3</sup> See Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (File No. SR-PSE-95-24).

<sup>4</sup> The Exchange proposes to add the following text to Rule 8.103(c):

"If the Submitting Member has indicated an intention to cross or act as principal with respect to any part of the FLEX trade, acceptance of the displayed BBO shall be automatically delayed until the expiration of the BBO Improvement Interval. Prior to the BBO Improvement Interval, the Submitting Member must indicate at the post the price at which the member expects to trade. In these circumstances, the Submitting Member may participate with all other FLEX-participating members in attempting to improve or match the BBO during the BBO Improvement Interval. At the expiration of the BBO Improvement Interval, the Submitting Member must promptly accept or reject the BBO(s)."