

until June 30, 1996, the period during which NCP was authorized to pay the dividend.

On March 27, 1996, NCP distributed to GPU, by way of a dividend, the capital stock of its Project Subs other than those that hold NCP's interest in the Pasco Cogeneration Project, namely, NCP Pasco Incorporated and NCP Dade Power Incorporated (the "Pasco Project Subs"). NCP was unable to pay the dividend with respect to the Pasco Project Subs because it had not yet received certain third-party consents which are required under its project agreements as a condition to effecting the transfer. NCP now anticipates that these consents will be received by December 31, 1996, and NCP requests authorization to declare the dividend with respect to the Pasco Project Subs at any time and from time to time on or before December 31, 1996.

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

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-37717; File No. SR-NASD-96-33]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Small Order Execution System Tier Size Classifications**

September 24, 1996.

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 September 11, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as a stated policy practice and procedure with respect to the administration and enforcement of NASD rules under section 19(b)(3)(A)(i) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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 is submitting this filing to effectuate The Nasdaq Stock Market, Inc.'s ("Nasdaq") periodic reclassification of Nasdaq National Market ("NNM") securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through Nasdaq's Small Order Execution System ("SOES") and the minimum quote size requirements for Nasdaq market makers in NNM securities.<sup>1</sup> Specifically, under the proposal, 591 NNM securities will be reclassified into a different SOES tier size effective October 1, 1996. Because the proposed rule change is an interpretation of existing NASD rules, there are no language changes.

**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 NASD 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. The NASD has prepared summaries, set forth in Sections (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*

The purpose of the rule change is to effectuate Nasdaq's periodic reclassification of NNM securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through SOES and the minimum quote size requirements for Nasdaq market makers in NNM securities. Nasdaq periodically reviews the SOES tier size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of June 28,

<sup>1</sup> In 1988, the Commission approved a proposed rule change to establish maximum SOES order size tiers for all NNM securities, and the periodic reexamination and reclassification of NNM securities within those tier sizes. See Securities Exchange Act Release No. 25791 (June 9, 1988), 53 FR 22594 (June 16, 1988) ("SOES Tier Size Order").

1996, pursuant to the following established criteria.<sup>2</sup>

NNM securities with an average daily non-block volume of 3,000 shares or more a day, a bid price less than or equal to \$100, and three or more market makers are subject to a minimum quotation size requirement of 1,000 shares and a maximum SOES order size of 1,000 shares;

NNM securities with an average daily non-block volume of 1,000 shares or more a day, a bid price less than or equal to \$150, and two or more market makers are subject to a minimum quotation size requirement of 500 shares and a maximum SOES order size of 500 shares; and

NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price less than or equal to \$250, and less than two market makers are subject to a minimum quotation size requirement of 200 shares and a maximum SOES order size of 200 shares.

Pursuant to the application of this classification criteria, 591 NNM securities will be reclassified effective October 1, 1996. These 591 NNM securities are set out in the NASD's Notice To Members 96-62 (September 1996).

In ranking NNM securities pursuant to the established classification criteria, Nasdaq followed the changes dictated by the criteria with three exceptions. First, an issue was not moved more than one tier size level. For example, if an issue was previously categorized in the 1,000-share tier size, it would not be permitted to move to the 200-share tier even if the reclassification criteria showed that such a move was warranted. In adopting this policy, Nasdaq was attempting to maintain adequate public investor access to the market for issues in which the tier size level decreased and help ensure the ongoing participation of market makers in SOES for issues in which the tier size level increased. Second, for securities priced below \$1.00 where the reranking called for a reduction in tier size, the tier size was not reduced. Third, for the top 50 Nasdaq securities based on market capitalization, the SOES tier sizes were not reduced regardless of whether the reranking called for a tier-size reduction.

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the rules of the NASD governing the operation of The Nasdaq Stock Market be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

<sup>2</sup> The classification criteria are set forth in NASD Rule 4613(a)(2) and the footnote to NASD Rule 4710(g).

facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. The NASD believes that the reassignment of NNM securities within SOES tier size levels and minimum quotation size levels will further these ends by providing an efficient mechanism for small, retail investors to execute their orders on Nasdaq and by providing investors with the assurance that they can effect trades up to a certain size at the best prices quoted on Nasdaq.

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

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act and Section (e) of Rule 19b-4 promulgated thereunder because the re-ranking of NNM securities into appropriate SOES tier sizes was done pursuant to the NASD's stated policy and practice with respect to the administration and enforcement of two existing NASD rules. Further, in the SOES Tier Size Order, the Commission requested that the NASD provide this information as an interpretation of an existing NASD rule under Section 19(b)(3)(A) of the Act.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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. 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 SR-NASD-96-33 and should be submitted by October 25, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

*Deputy Secretary.*

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**[Release No. 34-37753; File No. SR-NSCC-96-14]**

**Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Use of Letters of Credit as Clearing Fund Collateral**

September 30, 1996.

On July 25, 1996, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR-NSCC-96-14) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the Federal Register on August 26, 1996, to solicit comments from interested persons.<sup>2</sup> No comments were received. As discussed below, this order approves the proposed rule change.

**I. Description**

With this order, the Commission is granting full approval to NSCC's rule filing concerning participants' use of letters of credit as clearing fund collateral. Previously, the Commission granted temporary approval to the proposed rule change.<sup>3</sup> Specifically, the

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

<sup>2</sup> Securities Exchange Act Release No. 37582 (August 19, 1996), 61 FR 43800.

<sup>3</sup> The proposed rule change was originally filed on October 27, 1989, and on January 31, 1990, 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

rule change increases the minimum cash contribution for any member that uses letters of credit to collateralize its clearing fund required deposit from \$50,000 to the greater of \$50,000 or 10% of that member's required clearing fund deposit up to a maximum of \$1,000,000. In addition, the rule change provides that only 70% of a member's required clearing fund deposit may be collateralized with letters of credit. The rule change also adds headings to the clearing fund formula section for clarity and made other nonsubstantive drafting changes.

**II. Discussion**

Section 17A(b)(3)(F) of the Act requires that a clearing agency's rules be designed to ensure the safeguarding of securities and funds in its custody or control or for which it is responsible and to protect investors and the public interest.<sup>4</sup> The Commission believes NSCC's proposal to increase the minimum cash contribution for those participants using letters of credit to collateralize their clearing fund obligations should make NSCC's clearing fund more liquid which should enable NSCC to meet its obligation to safeguard securities and funds and to protect the interests of investors and of the public.

Although letters of credit are useful means of funding clearing agency guarantee deposits, their unrestricted use may present risks to clearing agencies. Because letters of credit reflect the issuer's promise to pay funds upon presentation of stipulated documents by the holder, a clearing agency holding letters of credit will be exposed to risk should the issuer refuse to honor its promise to pay. Furthermore, because under the Uniform Commercial Code the issuer may defer honoring a payment request until the close of business on the third banking day following receipt of the required documents, a clearing agency making a payment request may have to either await payment or seek alternative short-term financing. This waiting period could reduce a clearing agency's liquidity and thereby could hinder its ability to meet its payment obligations on a timely basis.<sup>5</sup>

extensions to the temporary approval to allow the Commission and the 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.]

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).

<sup>5</sup> To compensate for risks such as issuer defaults and delays in honoring letters of credit, NSCC