

The proposed NASD Dispute Resolution By-Laws are modeled on those of NASD Regulation, with modifications, described below, appropriate to the particular functions of NASD Dispute Resolution. For example, NASD Dispute Resolution will not require that a committee other than the NAMC review all rulemaking proposals. Similarly, there is no need for provisions on nominations and elections, as all NASD Dispute Resolution Board members will be selected by the NASD Board of Governors. Standard provisions allowing for the appointment of an Executive Committee and a Finance Committee have been included for flexibility, although it is not immediately expected that such committees will be needed.

Proposed Article IV, Section 4.2 sets the number of Board members at five to eight although, as stated above, the intention initially is to have only five Board members. In addition, the Chief Executive Officer of the NASD will be an ex-officio non-voting member of the Board. Proposed Section 4.3(a) provides that the number of non-industry directors shall equal or exceed the number of industry directors plus the President. This means that the President is treated as an industry director for this purpose. The other industry director and at least two of the non-industry directors also will be sitting members of the NASD Board. This overlapping membership provides stability and uniformity among the corporations. At least one of the non-industry directors also will qualify as a public director. The proposed By-Laws define "Public Director" as a director who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, Nasdaq, or NASD Dispute Resolution. The By-Laws define "Non-Industry Director" as a director (excluding the President) who is (1) a public director or public member; (2) an officer or employee of an issuer of securities listed on Nasdaq or Amex, or traded in the over-the-counter market; or (3) any other individual who would not be an industry director or industry member.

A minor modification was made to the standard terminology in Section 4.13(h) to clarify that the Board may appoint a non-director to a committee, since this power is implied but not specifically stated in the preceding paragraphs of Section 4.13.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of

the Act,⁹ which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will protect the public interest by providing a sharper focus on the dispute resolution process and maintaining Commission oversight of that process.

Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation 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.

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

Within 35 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 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 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. 20549-0609. 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 File No. SR-NASD-99-21 and should be submitted by July 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41504; File No. SR-NSCC-98-14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Ceasing To Act for a Member

June 9, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 8, 1998, 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

The proposed rule change will amend NSCC's rules to eliminate the distinction between those instances where NSCC ceases to act on behalf of a member as a result of the member's insolvency or for another reason and to permit NSCC to complete certain open receipt versus payment and delivery versus payment transactions ("RVP/DVP transactions").

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

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 section (A), (B), and (C) below, of the most significant aspects of such statements.²

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

The purpose of the proposed change is to eliminate the distinction between those instances where NSCC declines or ceases to act for a member because the member is insolvent and where NSCC declines or ceases to act for a member for another reason. The proposed rule change also would permit NSCC to complete certain open RVP/DVP transactions of an insolvent broker-dealer that is a member or clears through a member.

Declining or Ceasing To Act

According to NSCC, there is no substantive reason for continuing the distinction in Rule 18 between those instances where NSCC ceases to act because a member has become insolvent and those instances where NSCC ceases to act for another reason. NSCC's procedures for ceasing to act for an insolvent member are set forth in Section 3 of Rule 18 and its procedures for ceasing to act when the member is not insolvent are set forth in Section 2 of Rule 18. Therefore, the proposed rule change merges these two Sections.

Currently, Sections 2(a) and (b) (non-insolvency scenario) and Sections 3(a) and (b) (insolvency scenario), set forth the transactions which may be eliminated by NSCC from its processing when it ceases to act for a member. Generally, these sections provide that if NSCC gives notice that it is ceasing to act for a member before NSCC issues the security balance orders in a pending balance order accounting operation or the consolidated trade summary in a pending continuous net settlement accounting operation for that member's pending trades, NSCC may, in its discretion, exclude that member's trades from the balance order or continuous net settlement accounting operation, as

appropriate. This means that any trade not guaranteed by NSCC before NSCC ceases to act could be eliminated from NSCC's clearance and settlement systems. As a result the parties to the trade would have to settle the trade on their own outside of NSCC.

Proposed Sections 2(a) (i) and (ii) would replace Sections 2 (a) and (b) and Sections 3 (a) and (b) and would specifically tie the exclusion of a trade to NSCC's guaranty. Proposed Section 2(a)(iii) would address the elimination of security orders issued with respect to "special trades" and transactions in foreign securities. Currently, the elimination of these trades is only addressed in the insolvency portion of NSCC's rules, Section 3(c)(iii).

Section 2(c) currently sets forth how NSCC would handle envelope transactions when it ceases to act for a solvent member. However, Section 3 of NSCC's rules does not address how Envelope transactions are handled when NSCC ceases to act for an insolvent member. To remedy this situation, proposed Section 4 would mirror current Section 2(c) and would address the completion of envelope transactions of a member for whom NSCC has declined or ceased to act, regardless of the solvency status of the member.

Sections 2(d)(i) and (ii) and Section 3(b)(ii) pertain to the completion of CNS trades. According to NSCC, when it ceases to act for a member, it completes CNS trades through a qualified securities depository regardless of whether the member was solvent or insolvent. However, only Section 2 specifically addresses the completion of these trades through a qualified securities depository. Accordingly, proposed Section 5 clarifies that CNS transactions would be completed through a qualified securities depository regardless of the solvency status of the relevant member, unless, in an insolvency scenario, the rules of the relevant insolvency regime did not allow NSCC to take certain actions with respect to the completion of CNS trades.

Sections 2(d)(iii) and 3(c)(ii) currently address the closing out of any remaining CNS transactions. Under the proposed rule change, these sections would be merged into proposed Section 6(a).

Sections 2(b) and 3(c)(ii) pertain to the completion of balance order transactions after NSCC ceases to act for a member. According to NSCC, when it ceases to act for a solvent or insolvent member, the procedures for completing a balance order transaction are the same. However, only Section 3 details how NSCC would close out balance order transaction and the procedure for members to submit related close-out

losses to NSCC. To remedy this deficiency, the proposed rule change proposes new Section 6(b), which is similar to current Sections 3(c) and (d). Proposed Section 6(b) would cover the close-out of balance order transactions regardless of whether an insolvency situation exists. Proposed Section 6(b) also contains new language that requires that a member that desires to submit a loss to NSCC satisfy the terms and conditions, if any, imposed by NSCC on the close out of the relevant balance order transaction.

The language contained in current Section 2(e) technically only applies non-insolvency scenarios. Under the proposed rule change the language would apply to both insolvency and non-insolvency scenarios and would appear once, in Section 7(a). The language set forth in current Section 2(f) is also set forth in Section 3(f). Under the proposal, it would appear once, in Section 7(f).

The proposed rule change also would add the following terms to NSCC rules: "CNS Position"; "Net Close Out Position"; "RVP/DVP transaction"; and "RVP/DVP customer".

DVP/RVP Transactions

The proposed rule change adds a new Section 3, which pertains to CNS or balance order transactions that are wholly executory, RVP/DVP transactions. The RVP/DVP transactions covered by proposed Section 3 are those in which the customer ("RVP/DVP customer") has executed its purchase and sale transaction with the defaulting broker-dealer (directly, if such defaulting party is a member or through a clearing member if it is not a member) and would have taken delivery of the underlying cash or securities from the defaulting broker-dealer on an RVP/DVP basis at its custodian bank or other depository agent in the absence of the defaulting broker's liquidation.

After NSCC has declined or ceased to act for a member, NSCC would attempt to complete (1) all open RVP/DVP transactions, of which NSCC is aware, to the extent they would not increase the size of the position in any security that NSCC would have to close-out, and (2) any additional open RVP/DVP transactions to the extent deemed appropriate by NSCC's Board of Directors. NSCC's obligation set forth in (1) holds regardless of whether NSCC would gain or lose money by completing such transactions, and any determinations by the NSCC Board to close-out additional RVP/DVP transactions would be made without regard to the potential profit or loss for NSCC in any individual transaction. In

² The Commission has modified parts of these statements.

either case, NSCC would have no obligation to complete any open RVP/DVP transaction if: (1) NSCC believe it could not complete all RVP/DVP transactions in the same issue that it would be obligated to attempt to complete under this new provision; (2) there were allegations of fraud with respect to such trades or such trades are otherwise questionable; or (3) NSCC believed such trades could not be completed on a timely basis.

The proposed rule change would require NSCC to provide notice to the trustee or receiver of the member (if, in the case of an insolvent member, one has been appointed) and the relevant RVP/DVP customers or the RVP/DVP customer's depository agent or its depository agent's depository, of the RVP/DVP transactions NSCC intends to attempt to complete. This notice would alert the RVP/DVP customer that completion of any such transaction with NSCC constitutes a presumed waiver by the RVP/DVP customer of any claim arising out of such transactions against the member for whom the NSCC has declined or ceased to act, or in the case of an insolvent member, the receiver or trustee (or any successor trustee) or SIPC. This notice would typically be sent via The Depository Trust Company's electronic message dissemination system.

NSCC believes, that, by allowing it to complete open transactions in an insolvency scenario, the bankrupt estate's market exposure from the open positions would be limited, the potentially large administrative burden of liquidating the open transactions and processing claims by the RVP/DVP customers would be reduced, and the disruptive effect of the liquidation on the affected market participants would be minimized. In addition, any delay in the completion of open RVP/DVP transactions by NSCC during a liquidation, especially in the event of the insolvency of one of NSCC's largest members, would create extremely large and unnecessary short term funding obligations for NSCC.

NSCC believes the proposed rule change is consistent with Section 17A of the Act because the revisions to Rule 18 clarify the actions that NSCC is permitted to take when it declines or ceases to act for a member.

(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 relating to the proposed rule change 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 NW, Washington, DC 20549-0609. 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 in Washington, DC. 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 No. SR-NSCC-98-14 and should be submitted by July 8, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41502; File No. SR-NYSE-99-13]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 Relating to Original Continued Listing Criteria

June 9, 1999.

I. Introduction

On March 31, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to amendments to the NYSE's Listed Company Manual ("Manual") regarding the original and continued listing criteria and procedures of the Exchange. On April 21, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.³

Notice of the proposal was published in the **Federal Register** on May 3, 1999.⁴ The Commission did not receive any comment letters on the proposal. On May 27, 1999, the NYSE submitted Amendment No. 2 to the proposed rule change.⁵ On June 8, 1999, the NYSE submitted Amendment No. 3 to the proposed rule change.⁶ In this notice

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, dated April 21, 1999. In Amendment No. 1, the NYSE resubmitted the entire filing to clarify several aspects of the proposal.

⁴ See Securities Exchange Act Release No. 41324 (April 22, 1999), 64 FR 23710.

⁵ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, SEC, dated May 27, 1999. In Amendment No. 2, the NYSE proposes to amend the international "cash flow standard" in the original proposal to require \$100 million in aggregate earnings for the last three fiscal years instead of \$25 million as is currently the case. Companies would also be required to report a minimum of \$25 million in earnings for each of the two most recent years, instead of simply reporting a positive amount of earnings for the last three fiscal years.

⁶ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, SEC, dated June 8, 1999. In Amendment No. 3, the NYSE proposes to codify the Exchange's policy regarding the use of financial data to grant eligibility clearance to an issuer that has less than three years of operating history and to clarify that real estate investment trusts and closed-end management investment companies listing with a three-year operating

³ 17 CFR 200.30-3(a)(12).