

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 proposal, 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 the File No. SR-NASD-00-18 and should be submitted by May 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42747; File No. SR-NSCC-98-14]

#### Self-Regulatory Organization; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Ceasing to Act for a Member

May 2, 2000.

On December 8, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSCC-98-14) pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on June 17, 1999.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

The rule change eliminates 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 rule change also permits NSCC to complete certain open RVP/DVP transactions of an insolvent broker-dealer that is a member or clears through a member.

##### *a. Declining or Ceasing To Act*

NSCC's procedures for ceasing to act for an insolvent member were set forth in former Section 3 of Rule 18. Its procedures for ceasing to act when the member is not insolvent were set forth in Section 2 of Rule 18. Former Sections 2(a) and (b) (non-insolvency scenario) and Sections 3(a) and (b) (insolvency scenario) set forth the transactions which could be eliminated by NSCC from its processing when it ceased to act for a member. Generally, these sections provided that if NSCC gave notice that it was ceasing to act for a member before NSCC issued the security balance orders in a pending balance order accounting operation or before NSCC issued the consolidated trade summary in a pending continuous net settlement accounting operation for that member's pending trades. NSCC could in its discretion exclude that member's trades from the balance order or continuous net settlement accounting operation. Trades so executed would have to be settled between the parties outside of NSCC.

Under the rule change, new Sections 2(a)(i) and (ii) replace Sections 2(a) and (b) and Sections 3(a) and (b) and specifically tie the exclusion of a trade to whether or not the trade has been guaranteed by NSCC. New Section 2(a)(iii) addresses the exclusion of security orders issued with respect to "special trades" and transactions in foreign securities. Prior to the rule change, the exclusion of these trades was only addressed in the insolvency portion of NSCC's rules, former Section 3(c)(iii).

Former Section 2(c) set forth NSCC's procedures for handling envelope transactions when it ceased to act for a

solvent member. Former Section 3 of NSCC's rules did not address envelope transactions when NSCC ceased to act for an insolvent member. New Section 4 mirrors former Section 2(c) and addresses the completion of envelope transactions of a member for whom NSCC has ceased to act regardless of the solvency status of the member.

Former Sections 2(d)(i) and (ii) and Section 3(b)(ii) governed 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. However, only former Section 2 (non-insolvency scenario) specifically addressed the completion of these trades through a qualified securities depository. Accordingly, new Section 5 clarifies that CNS transactions will 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 do not allow NSCC to take certain actions with respect to the completion of CNS trades.

Former Sections 2(d)(iii) and 3(c)(ii) addressed the closing out of any remaining CNS transactions. Under the rule change, this is now covered in new Section 6(a).

Former Sections 2(b) and 3(c)(ii) pertained to the completion of balance order transactions after NSCC ceases to act for a member. Although NSCC's procedures for completing balance order transactions are the same regardless of whether NSCC is ceasing to act for a solvent or insolvent member, only former Section 3 detailed how NSCC would close-out balance order transactions and how members were to submit related close-out losses to NSCC. The rule change adopts new Section 6(b), which is similar to former Sections 3(c) and (d). New Section 6(b) governs the close-out of balance order transactions regardless of whether an insolvency situation exists.

The language contained in former Section 2(e), which set forth NSCC's rights with respect to any balance due to it from a member after NSCC had ceased to act for the member, technically only applied in non-insolvency scenarios. Under the rule change, the language of Section 2(e) now appears in Section 7(a) and applies to both insolvency and non-insolvency scenarios. The language set forth in former Sections 2(f) and (f), which provided that NSCC would maintain a lien on all property a member places with NSCC as security for any and all liabilities of the member to NSCC now appears in Section 7(f).

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

<sup>2</sup> Securities Exchange Act Release No. 41504 (June 9, 1999), 64 FR 32586 (June 17, 1999).

<sup>18</sup> See 17 CFR 200.30-3(a)(12).

The rule change also adds the following terms to NSCC Rule 1 (Definition and Description): "CNS Position," "New Close Out Position," "RVP/DVP Transaction," and "RVP/DVP Customer."

#### b. DVP/RVP Transactions

The rule change adds a new Section 3 to Rule 18, which pertains to CNS or balance order RVP/DVP transactions.<sup>3</sup> The RVP/DVP transactions covered by proposed Section 3 are those in which the RVP/DVP customer<sup>4</sup> (1) has executed an RVP/DVP transaction with the NSCC member for which NSCC has ceased to act or with an introducing broker-dealer which clears through an NSCC member for which NSCC has ceased to act and (2) would have taken delivery of the cash or securities from the broker-dealer for which NSCC has ceased to act on an RVP/DVP basis at its custodian bank or other depository agent in the absence of the default.

Under the new rule, after NSCC has ceased to act for a member, NSCC will attempt to complete: (1) All open RVP/DVP transactions of which NSCC is aware prior to ceasing to act but only to the extent that the completion of the RVP/DVP transactions 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) remains regardless of whether NSCC would gain or lose money by completing such transactions, and any determinations by the NSCC Board to complete any additional RVP/DVP transactions would be made without regard to the potential profit or loss for NSCC in any individual transaction. In either case, NSCC would have no obligation to complete any open RVP/DVP transaction in an issue if: (1) NSCC believed it could not complete all RVP/DVP transactions in such issue that it would be obligated to attempt to complete under this new provision; (2) there were allegations of fraud or other questionable activities with respect to an issue; or (3) NSCC believed that the completion of an RVP/DVP transaction in an issue could not be completed.

<sup>3</sup> The term "RVP/DVP transaction" is defined in NSCC Rule 1 to mean any wholly executory receipt-versus-payment or delivery-versus-payment transaction between an NSCC member and an RVP/DVP customer. The term "RVP/DVP customer" is defined in Rule 1 to mean a party who has executed a RVP/DVP transaction with an NSCC member for whom NSCC has declined or ceased to act, or with an introducing broker who clears through an NSCC member for whom NSCC has declined or ceased to act.

<sup>4</sup> *Supra* note 3.

The rule change requires NSCC to provide notice of NSCC's intent to complete the RVP/DVP transactions to the trustee or receiver of the member for whom NSCC has ceased to act (if one has been appointed) and to the relevant RVP/DVP customers or the RVP/DVP customers' depository agents or their depository agents' depositories. This notice will 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 NSCC has ceased to act, its receiver or trustee (or any successor trustee), or SIPC.<sup>5</sup>

#### II. Discussion

Section 17A(b)(3)(F)<sup>6</sup> of the Act requires that the rules of a clearing agency be designed among other things, to protect investors and the public interest. As set forth below, the Commission finds that NSCC's rule change is consistent with this obligation under the Act.

The Commission finds that allowing NSCC to complete RVP/DVP transactions after it ceases to act for an insolvent member could benefit customers, counterparties, and creditors of the insolvent broker-dealer by minimizing the disruptive market effects and the large administrative burdens and costs associated with the insolvency of a broker-dealer. The Commission also finds that the merging within NSCC's rules of the actions NSCC will take when it ceases to act for a member, regardless of whether it ceases to act because of the insolvency of the member or for some other reason, simplifies and makes clearer NSCC rules without effecting any real changes to its rules. As such, the Commission finds that NSCC's proposed rule change is consistent with NSCC's statutory obligation to protect investors and the public interest.

#### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-98-14) be, and hereby is, approved.

<sup>5</sup> This notice would typically be sent via The Depository Trust Company's electronic message dissemination system.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42746; File No. SR-NYSE-99-34]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to the Exchange's Allocation Policy and Procedures

May 2, 2000.

#### I. Introduction

On July 20, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change amending the Exchange's Allocation Policy and Procedures ("Policy"). On February 7, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on March 9, 2000.<sup>4</sup> This order approves the NYSE proposal, as amended.

#### II. Description of the Proposal

According to the Exchange, its Policy is intended to: (1) Ensure that the allocation process for securities is based on fairness and consistency and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) provide an incentive for ongoing enhancement of performance by specialist units; (3) provide the best possible match between a specialist unit and security; and (4) contribute to the strength of the specialist system.

Since 1987, the Exchange's Quality of Markets Committee has appointed a number of Allocation Review Committees ("ARCs") to review the

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Terri Evans, Attorney, Division of Market Regulation ("Division"), Commission, dated February 4, 2000 ("Amendment No. 1").

<sup>4</sup> Securities Exchange Act Release No. 42487 (March 2, 2000), 65 FR 12603.