

proposed rule change, the Commission may summarily abrogate such 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, 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-2002-07 and should be submitted by September 17, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46385; File No. SR-NSCC-2002-06]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Imposition of Fines

August 20, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 26, 2002, National Securities

Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on August 19, 2002, amended 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 would clarify NSCC's rules with regard to the imposition of fines upon its members and would more specifically identify the actions or inactions of members that would result in fines being imposed upon them.<sup>2</sup> In addition, a technical correction is proposed to be made to NSCC Rule 48, Disciplinary Proceedings, to conform the rule to other changes that were made effective by Release No. 34-36866.<sup>3</sup>

#### 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>4</sup>

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

NSCC's Rule 48 allows NSCC to impose fines upon its members for any error, delay, or other conduct that is determined to be detrimental to the operations of NSCC. Historically, NSCC has imposed fines upon members for failures to settle in a timely manner end of day settlement balances, for late settlement acknowledgements, and for late payments of clearing fund deposits.

NSCC's Rule 15 permits NSCC to request that members furnish to NSCC such adequate assurances of their

financial responsibility and operational capability as NSCC may at any time deem necessary. Pursuant to this rule and in furtherance of NSCC's responsibility, NSCC periodically requests that its members provide financial and operational information about their business. While many members comply with these requests, some do not. The lack of this information could create risk for NSCC. To address this concern, NSCC proposes to fine members who fail to timely respond to requests for information.

In connection with imposing fines for failure to timely provide requested financial and operational information, NSCC would notify all members that it requires certain information on an ongoing basis and that failure to provide the information would result in a fine being imposed with such fining commencing three months after the Commission approves the proposed rule change. For a period of one year from that date, members that fail to timely provide information would be issued one warning letter prior to the imposition of the fine. At the conclusion of the one-year period, NSCC would discontinue the warning letters prior to fining.

In addition to the above, members have an affirmative duty to notify NSCC on an ongoing basis of certain internal conditions that may cause NSCC to reevaluate the member's continued participation. NSCC is proposing to fine members that fail to meet these notification requirements. Upon learning of an event upon which the member failed to provide timely notification, NSCC would impose a fine. No reminder letter would be sent in this context.

Participants would continue to have the ability to contest fines, as currently provided for within NSCC's rules and procedures. Fines imposed against settling members would be collected through a miscellaneous charge in the member's monthly statement of charges. Fines imposed against settling bank members may be collected through an adjustment to the settling bank's end-of-day settlement balance, through a separate fed wire, or through checks made payable to NSCC. Alternatively, if the settling bank maintains additional memberships with NSCC, the fine may be collected through a settling account under its additional membership.

In conjunction with the above, NSCC proposes making a technical correction to Rule 48 Disciplinary Proceedings. In Release No. 34-36866, the Commission approved an NSCC rule change to accommodate same-day funds

<sup>2</sup> Exhibit 1 to this notice sets forth NSCC's proposed revisions.

<sup>3</sup> Securities Exchange Act Release No. 36866 (February 27, 1996), 61 FR 7288 [File No. NSCC-96-03] (order modifying NSCC's Rules and Procedures to accommodate same-day funds settlement).

<sup>4</sup> The Commission has modified parts of these statements.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

settlement ("SDFS").<sup>5</sup> This rule change, in part, created Addendum P that set SDFS Failure to Settle fines in the range of \$100 to \$10,000. At that time, Section 1 of Rule 48 should have been modified to change the maximum fine for any single offense from \$5,000 to \$10,000, and a reference to settling bank only members should also have been included.

NSCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it ensures that NSCC is able to safeguard securities and funds in NSCC's possession.

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

NSCC does not believe that the proposed rule change would have any impact on or impose any 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 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, 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 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 NSCC. All submissions should refer to the File No. SR-NSCC-2002-06 and should be submitted by September 17, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

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

**Exhibit 1: Text of Proposed Changes to NSCC's Rules and Procedures**

**Addendum P  
Fine Schedule**

(1) SDFS Failure-To-Settle and Late Acknowledgment Fines

Net Debit	First occasion	Second occasion	Third occasion	Fourth occasion
\$0—100,000 .....	\$100	\$200	\$500	\$1,000
\$100,000—900,000 .....	300	600	1,500	3,000
\$900,000—1,700,000 .....	600	1,200	3,000	6,000
\$1,700,000—2,500,000 .....	900	1,800	4,500	9,000
\$2,500,000—up .....	1,000	2,000	5,000	10,000

**Notes:** (a) In addition to the fine, interest is charged to the Member, or the Settling Bank Only Member, that failed to settle for the cost of borrowing to complete settlement.

(b) The number of occasions will be determined over a moving three-month period. A Member, or a Settling Bank Only Member, that exceeds four failure-to-settle occasions in a three-month period will be subject to further fees and/or other actions at the Corporation's discretion after

consultation between the Member, or the Settling Bank Only Member, and the Corporation.

(c) If the Corporation determines that it had significantly affected a Member's, or a Settling Bank Only Member's, ability to settle (because of a Corporation system delay, for example), the Corporation may determine to waive failure-to-settle fines for that occurrence.

(2) Failure to notify and supply required data as provided for under these Rules & Procedures (other than as provided in items one, three and four of this addendum): Each single offense, \$5,000.00 fine.

(3) Late Satisfaction of Clearing Fund Deficiency Call <sup>1</sup>

Amount	First occasion	Second occasion	Third occasion	Fourth occasion (or greater)
Up to \$100 M .....	*	\$100	\$200	\$500
\$100 M to \$900 M .....	*	300	600	1,500
\$900 M to \$1.7 MM .....	*	600	1,200	3,000
\$1.7 MM to \$2.5 MM .....	*	900	1,800	4,500
Greater than \$2.5 MM .....	*	1,000	2,000	5,000

\* First occasions result in a warning letter issued to the Member.

<sup>5</sup> *Supra* note 3.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> The number of occasions is determined over a moving three-month period beginning with the first occasion.

(4) Requests For Information <sup>2</sup>

Request for information (Failure to timely provide)	First occa- sion	Second occa- sion	Third occa- sion	Fourth occa- sion
Financial Statements:				
Audited Financial Statements for Member or Parent .....	*	\$300	\$600	\$1,500
Monthly and/or Quarterly Regulatory Filings .....	*	300	600	1,500
Monthly and/or Quarterly Financial Statements .....	*	300	600	1,500
Proforma Financial Statements .....	*	300	600	1,500
Any Financial Computations, Consolidating Worksheets or Internal Statements, Upon Special Request .....	*	300	600	1,500
Risk Questionnaires/Profiles.				
Questionnaires .....	*	150	300	750
Profiles .....	*	150	300	750
Risk Management Policies and Procedures .....	*	150	300	750
Disaster Recovery Procedures .....	*	150	300	750

\*First occasions result in a warning letter issued to the Member. Warning Letters for first occasion violations will be discontinued one year after implementation of this schedule, at which time each violation will be subject to imposition of a fine.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46389; File No. SR-NSCC-2002-05]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend Clearing Fund Requirements and Letters of Credit Collateralization

August 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 16, 2002, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on July 25, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### 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 increase the minimum amount of cash that must be deposited by members, except for Mutual Fund/Insurance Services Members, to satisfy

<sup>2</sup> Fines to be levied for offenses within a moving twelve-month period beginning with the first occasion.

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by the NSCC.

<sup>3</sup> The Collateral Management System ("CMS") provides automated access to information on members' clearing fund, margin, and other deposits at NSCC and at other participating clearing entities.

clearing fund requirements and to limit the amount of a deposit that may be collateralized with letters of credit.

#### 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. The NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

Under NSCC's current rules, each member, except for Mutual Fund/Insurance Services Members, is required to maintain a minimum contribution to the clearing fund of \$10,000. The first \$10,000 of a member's contribution must be in cash unless all or a part of the member's contribution is collateralized with letters of credit, in which case the greater of \$50,000 or ten percent of the member's contribution up to a maximum of \$1,000,000 is required to be in cash. On a peak settlement day, if members only deposit the minimum cash required at any given time, NSCC

CMS allows participants to more efficiently manage their various clearing fund and margin deposits by providing electronic access to consolidated data regarding the underlying collateral held at multiple clearing agencies and allows participating clearing entities the ability to view common members' clearing fund and margin deposits at other clearing entities. See Securities Exchange Act Release Nos. 36091 (August 10, 1995), 60 FR 42931 (August 17, 1995) [SR-NSCC-95-06] (order approving the

might only be assured of a limited amount of cash thereby creating the possibility of a liquidity risk at NSCC. Furthermore, because NSCC expects an increase in members' reliance on the Collateral Management System, NSCC also expects an increase in members' requesting the return of excess cash.<sup>3</sup>

To assure NSCC of more cash to meet liquidity needs, NSCC proposes to modify Procedure XV (Clearing Fund Formula and Other Matters) of its Rules and Procedures to require that the first 40% of a member's clearing fund contribution must be in cash unless the member's clearing fund requirement is \$10,000 or less in which case the entire contribution must be in cash.<sup>4</sup> NSCC also proposes to amend Rule 4 (Clearing Fund) of its Rules and Procedures to reduce from 70% to 25% the percentage of members' required deposit to the clearing fund that may be collateralized with letters of credit.

Based on NSCC's current calculations, the proposed change in the percentage of cash that must be deposited to the clearing fund will impact approximately 48 member firms. The proposed change reducing the permitted use of letters of credit will affect 21 of the approximately 33 member firms that post such letters. NSCC intends to implement these clearing fund changes no earlier than 30 days after the Commission approves the proposed rule change. Mutual Fund/Insurance Services Members' cash contribution to and letters of credit requirements for the clearing fund will remain unchanged.

establishment of CMS); 40740 (December 3, 1998), 63 FR 67962 (December 9, 1998) [SR-NSCC-98-10] (order approving modification to CMS).

<sup>4</sup> The current version of Procedure XV (Version 1) is being revised by NSCC and the new version (Version 2) will be applicable to members on a rolling basis. The rule change proposes to amend clearing fund procedures in Procedure XV.A.I.(a) in Version 1 and Procedure XV.II.(A) of Version 2.