

NSCC is replacing the formulas currently reflected in its procedures with a more generalized provision to give NSCC the flexibility to determine what amount, if any, should be collected based on conditions that exist at that time.³ In addition, the reference to the authority which permits this charge is being corrected to reflect NSCC Rule 15, section 4.

NSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act⁴ and the rules and regulations thereunder applicable to NSCC because it will assure the safeguarding of funds and securities for which it is responsible by permitting NSCC to more appropriately collect collateral to cover its exposure from its members' unsettled positions.

(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 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

³ Additional factors that NSCC may use in determining intraday mark-to-the-market requirements include but are not limited to (1) percent of total security float, (2) average daily security volume, (3) position size (quantity and value), (4) portfolio concentration, and (5) industry/sector concentration.

⁴ 15 U.S.C. 78q-1.

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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-NSCC-2003-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in either hardcopy or by e-mail but not by both methods. 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 NSCC.

All submissions should refer to File No. SR-NSCC-2003-09 and should be submitted by March 29, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49352; File No. SR-NSCC-2003-03]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Execution Time for CNS Buy-Ins

March 2, 2004.

On March 24, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on March 14, 2003, amended

proposed rule change File No. SR-NSCC-2003-03 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposed rule change was published in the **Federal Register** on January 16, 2004.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The purpose of the proposed rule change is to modify NSCC Procedures VII.J, "CNS Accounting Operation, Recording of CNS Buy-Ins" and X.A.1, "Execution of Buy-Ins, CNS System, Equity Securities and Corporate Debt Securities" with regard to the execution time of CNS buy-ins. Except with respect to securities subject to a voluntary corporate reorganization, a member having a long CNS position at the end of any day may submit to NSCC a notice of intention to buy-in ("buy-in notice") specifying a quantity of securities (not exceeding such long CNS positions) the member intends to buy-in ("buy-in position"). The day the CNS buy-in notice is submitted is referred to as N, and N+1 and N+2 refer to the succeeding days. Each day commences in the evening and includes both an evening and daytime allocation. The CNS buy-in position is given high priority for allocation through N+2.

Pursuant to NSCC Procedure VII, if a CNS buy-in position is not satisfied at the end of the day cycle on N+2, the CNS buy-in may be executed. In effect, members have from the completion of the day cycle on N+2 to the close of the markets to execute the CNS buy-in. Operationally, as the day cycle generally completes at 3:10 p.m. eastern standard time ("e.s.t."), participants face a narrow timeframe within which they may execute CNS buy-ins. In the event that settlement and recycle times are extended or delayed, that window of time is further reduced.

At the request of participants and after consultation with the Securities Industry Association Buy-In Committee, NSCC is modifying Procedures VII and X to permit the execution of CNS buy-ins beginning at 3 p.m. e.s.t. or at such time as established by NSCC because of market events (e.g., days the marketplaces close early). NSCC will advise participants of any earlier execution time through an important notice five business days in advance. The change in time is not a requirement for executions of buy-ins but is to give

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 49061 (January 12, 2004), 69 FR 2641 (January 16, 2004).

⁵ 17 CFR 200.30-3(a)(12).

participants the ability to execute CNS buy-ins in a more efficient manner.

II. Discussion

Section 17A(b)(3)(F)³ of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. By allowing NSCC to establish an earlier and standard timeframe for CNS buy-ins, the proposed rule change provides NSCC members with a longer and consistent time period in which to execute CNS buy-ins to satisfy their CNS long-positions. As such, the proposed rule change is consistent with NSCC's obligation to facilitate the prompt and accurate clearance and settlement of securities transactions. Therefore, the Commission finds that NSCC's proposed rule change is consistent with its obligations under section 17A(b)(3)(F) of the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁴ that the proposed rule change (File No. SR-NSCC-2003-03) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49345; File No. SR-NYSE-2004-02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Follow-up Amendments to Its Constitution and Rules in Connection With Its New Governance and Management Architecture

March 1, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, (the

“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 16, 2004, the New York Stock Exchange, Inc. (“NYSE” 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.

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

The Exchange proposes to amend its Constitution and Rules. The changes to the NYSE Constitution and Rules constitute follow-up amendments related to the Exchange's new governance and management architecture, which was approved by the Securities and Exchange Commission on December 17, 2003.³

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 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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

The amended and restated Constitutional provisions and revised Rules, marked to show changes from the Exchange's existing Constitution and Rules, are set forth in Exhibit A hereto.

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

1. Purpose

By order dated December 17, 2003, the Commission approved a proposed rule change submitted by the Exchange to amend and restate the Exchange's Constitution to reform the governance and management architecture of the Exchange.⁴ The Commission's approval order noted that the Exchange

contemplated adopting several further amendments to the Constitution.⁵ This filing proposes those additional amendments.

The proposed amendments to the Exchange's Constitution will accomplish the following:

- Amend Article IV, section 12(a) to codify that each of the Standing Committees of the Board of Directors shall have the authority to engage independent legal counsel and other advisors as it determines necessary to carry out its duties, specifying that they should be other than the counsel or other advisors who advise Exchange officers or employees.⁶
- Amend Article IV, section 12(a) to clarify that the Chief Executive Officer (“CEO”) is recused from Board deliberations on the activities of the Standing Committees specified in that paragraph.⁷
- Amend Article IV, section 14(a) to clarify that rulemaking on the subjects described in that paragraph as normally confined to the Board or its committees may, if necessary, be authorized by an officer of the Exchange between board meetings, subject to informing the Board at its next meeting, and to the prior approval of the Chief Regulatory Officer if on a regulatory matter.⁸
- Amend Article VI, section 1 to clarify that it is the Chief Regulatory Officer who appoints regulatory officers, and amend section 3 of that Article to clarify that the CEO's responsibilities are subject to the specific provisions elsewhere in the Constitution regarding the separation of the regulatory functions.
- Modify Article V, section 2(b) to add an individual investor

⁵ *Id.*, at note 4.

⁶ This was first proposed with respect to the Audit Committee only, but was later expanded to cover any Standing Committee and to add the caveat regarding use of different advisors.

⁷ These are the Nomination & Governance, Human Resources & Compensation, Audit, and Regulatory Oversight & Regulatory Budget Committees.

⁸ As originally provided to the membership in a Special Membership Bulletin regarding Additional Amendments to the Constitution (“Special Membership Bulletin”), dated November 26, 2003, this language would have authorized an officer to “adopt rules or otherwise act as aforesaid.” The Exchange notes that, at the suggestion of Commission staff, the “otherwise act” language was deleted to avoid ambiguity. The Exchange further indicates that in the same section, again at the suggestion of Commission staff, language was added to clarify that a “committee consisting solely of directors” means a committee consisting solely of independent directors, *i.e.*, excluding the Chief Executive Officer. Under Article XIV, section 1 of the Constitution, minor, clarifying changes such as these may be made by the Board of the Exchange without the need for a further notice to the members or a waiting period.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (“Approval Order”).

⁴ See Securities Exchange Act Release No. 48946 (December 17, 2003); 68 FR 74678 (December 24, 2003).

³ 15 U.S.C. 78q-1(b)(3)(F).

⁴ 15 U.S.C. 78s(b)(2).

⁵ 17 CFR 200.30-3(a)(12).