

removing the explanatory information relating to "membership capacity statuses." The membership capacity statuses in Rules 3.2(b) and 3.3(b) delineate the membership classifications that member individuals and firms may have on the Exchange. In addition, asterisks are attached to certain membership capacity statuses in Rules 3.2(b) and 3.3(b). Rules 3.2(b) and 3.3(b) explain that the membership statuses noted with an asterisk are referred to in the Exchange rules as membership capacity statuses. In practice, this simply means that a membership applicant must elect on the Exchange's membership application form one of the statuses designated with an asterisk. Since the material related to the asterisks, and the asterisks themselves, only reflect internal Exchange procedures for categorizing its members, the proposed deletions reflect technical changes that are intended to simplify Exchange rules.

The Exchange proposes to revise Exchange Rule 3.8(a)(iii) to provide that a nominee of a member organization approved solely as a Clearing Member is not required to have an authorized trading function. The effect of the proposed rule is to eliminate the requirement that a nominee of a Clearing Member be required to attend the Exchange's Member Orientation Program and to pass the Exchange's Trading Member Qualification Exam. Nominees of Clearing Members originally were required to attend the Exchange's Member Orientation Program and pass the Member Qualification Exam because Exchange Clearing Members generally engaged in both clearing and trading activities. A Clearing Member conducting trading activities would have been required to have a nominee on the Exchange trading floor acting as a Floor Broker and/or Market-Maker. Certain Exchange Clearing Members have disposed of their trading activities and currently only engage in clearing activities on the Exchange. The proposed rule is intended to accommodate Clearing Members that only engage in clearing activities and do not otherwise engage in trading activities. Clearing Members that wish to engage in trading activities on the Exchange would still be required to designate a nominee who has an authorized trading function, and therefore would have to attend the Exchange's Member Orientation Program and to pass the Exchange's Trading Member Qualification Exam.

## 2. Statutory Basis

CBOE believes that the proposed rule change is consistent with the provisions

of Section 6(b) of the Act,<sup>3</sup> in general, and with Section 6(b)(5) of the Act,<sup>4</sup> in particular, which requires that CBOE rules be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

## 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2005-10 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2005-10. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2005-10 and should be submitted on or before April 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51359; File No. SR-NSCC-2004-07]

### **Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend the Membership Standards Required of Insurance Companies**

March 11, 2005.

## I. Introduction

On October 26, 2004, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-NSCC-2004-07 pursuant to Section

<sup>5</sup> 17 CFR 200.30-3(a)(12).

19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposed rule change was published in the **Federal Register** on January 24, 2005.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

## II. Description

The proposed rule change amends NSCC's Rules regarding the membership standards required of insurance companies. As a general matter, the current membership standards for insurance companies are based in part on ratings provided by rating agencies. The proposed rule replaces these standards in relevant part with a measure based on Risk-Based Capital ("RBC") ratios.

The RBC model was developed by the National Association of Insurance Commissioners ("NAIC"), the organization of insurance regulators from the 50 States, the District of Columbia, and the four U.S. territories. State insurance regulators created the NAIC in 1871 to address the need to coordinate regulation of multistate insurers. The NAIC has developed uniform financial reporting by insurance companies and an RBC model. The NAIC's RBC model is designed to calculate the minimum amount of capital that an insurer needs to support its overall business operations based on the degree of risk taken by the insurer and to protect the policyholders and business against adverse developments. Currently substantially all of the U.S. State insurance jurisdictions have adopted laws, regulations, or bulletins that are considered to be substantially similar to the NAIC's RBC for Insurers Model Act.

The calculation of the RBC ratio is based on an insurer's Total Adjusted Capital ("TAC"). TAC is comprised primarily of capital plus surplus divided by a capital level determined by the RBC formula called the Authorized Control Level Risk-Based Capital ("ACL RBC"). The ACL RBC is comprised of asset risk, credit risk, underwriting risk, and business risk.

In general, State regulatory authorities require no corrective action so long as an insurance company maintains an RBC ratio over 200%. NSCC's membership requirement would be an RBC ratio of 250% as derived from financial data reported by the insurance company to its State regulatory authority as part of its annual

statutorily-required financial statements. All current insurance company members of NSCC would meet the proposed 250% requirement.

Insurance companies will be required to submit the relevant data to NSCC on an annual basis at which time their compliance with the minimum standard will be reviewed by NSCC. In addition, any insurance company that fell below the 250% ratio during the course of the year will be required to notify NSCC immediately of this fact.

NSCC believes that the RBC standard is preferable to the existing NSCC requirements of using third-party ratings for the following reasons. First, the RBC standard should accurately represent the financial strength of an insurer because the RBC system is based on statutorily-required financial statements and it takes into account asset risks, credit risks, underwriting and pricing risks and the risk that the return from assets are not aligned with the requirements of the company's liabilities and general business risk. Second, the RBC standard is the industry benchmark. Third, the information needed to calculate the RBC ratio is readily available in the statutorily-required financial statements, which are to be provided to NSCC annually.

## III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.<sup>3</sup> The Commission finds that NSCC's proposed rule change is consistent with this requirement because it enhances NSCC's standards of financial responsibility applicable to insurance companies and therefore should help NSCC protect itself and its members from undue risk.

## IV. 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,<sup>4</sup> that the proposed rule change (File No. SR-NSCC-2004-07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51363; File No. SR-NSCC-2005-01]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend Its Operational Capability Requirement for Membership

March 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 19, 2005, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 parties.

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

The purpose of this proposed rule change is to amend NSCC's Rules and Procedures regarding the operational capability requirement for membership.

#### 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 these statements.<sup>2</sup>

<sup>5</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>2</sup> Securities Exchange Act Release No. 34-51035 (January 13, 2005), 70 FR 3413.

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

<sup>4</sup> 15 U.S.C. 78s(b)(2).