burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Furthermore, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal to amend CBOE Rule 6.25 by adding a provision relating to erroneous quotes in the underlying market is substantially similar to provisions contained in CBOE Rules 24.16(a)(5) and 43.5 and to a provision that was previously contained in CBOE Rule 6.25. Thus, the Commission does not believe that the proposed rule change raises any new issues. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

At any time within 60 days of the filing of this 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. 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*. Please include File Number SR–CBOE–2005–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–12. 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 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 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–2005–12 and should be submitted on or before March 10, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–656 Filed 2–16–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51174; File No. SR–NSCC–2003–22]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend the Standards of Financial Responsibility Required of Mutual Fund and Insurance Services Applicants and Members that Are Banks, Trust Companies, or Broker-Dealers

February 9, 2005.

I. Introduction

On November 10, 2003, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on November 29, 2004, amended proposed rule change File No. SR–NSCC–2003–22 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 December 13, 2004.[2] 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 Addendum B, ''Standards of Financial Responsibility and Operational Capability,'' and Addendum I, ''Standards of Financial Responsibility and Operational Capability For Fund Members,'' of NSCC's Rules and Procedures to enhance the standards of financial responsibility required of applicants and members that are banks, trust companies, and broker-dealers using or applying to use NSCC's non-guaranteed services as Mutual Fund/Insurance Services Members under Rule 2 and Fund Members under Rule 51.[3] Addendum B establishes financial criteria applicable to Mutual Fund/Insurance Services Members and

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 50797 (December 6, 2004), 69 FR 72238.

[3] Mutual Fund Services and Insurance Processing Services are non-guaranteed services.

applicants admitted or seeking admission under Rule 2. Addendum I establishes the financial criteria applicable to Fund Members and applicants admitted or seeking admission under Rule 51.

The proposed rule change (i) raises the minimum excess net capital requirement applicable to such broker-dealer applicants and members from $25,000 to $50,000 and (ii) changes the standards of financial responsibility required of banks and trust companies by referring to different types of criteria than are currently used for this purpose. The effective date for the proposed rule change as applied to current members is one year from the date of Commission approval. The one year period, arrived at after consultations with the affected members, is necessary to allow members that do not meet the increased or changed capital requirements sufficient time to evaluate their options and implement any necessary changes without undue disruption to their customers. The proposed rule change also amends Addendum I to require an established business history of six months instead of three years which is consistent with the required established business history for applicants for other types of membership in NSCC.

1. Increase of Minimum Excess Net Capital Required of Broker-Dealers Using Mutual Fund and Insurance Services

NSCC's current minimum excess net capital requirement applicable to broker-dealer applicants and members using non-guaranteed services was implemented in 1993.[4] In 1998, NSCC increased its minimum excess net capital requirements under Rule 2 for broker-dealer applicants and members using NSCC guaranteed services from $50,000 to $500,000 subject to certain limited exceptions.[5] At that time, no change was made to the financial requirements applicable to the use of non-guaranteed services. NSCC now believes it is appropriate to do so because of increased transaction volumes and settlement obligations.

NSCC currently has 290 broker-dealer members to which the increased excess net capital requirement will apply. Thirteen of the 290 broker-dealer members have been identified as not meeting the increased capital requirement. The purpose of delaying effectiveness of the proposed rule change is to allow these thirteen members time in which to obtain and apply additional excess net capital or to make alternate arrangements, such as clearing through another NSCC member, without disruption to their businesses.

NSCC currently requires a larger clearing fund deposit from broker-dealer members which have a minimum excess net capital of less than $50,000. When the proposed minimum excess net capital requirement is increased to $50,000, the minimum clearing fund requirements currently imposed will no longer be applicable because $50,000 in excess net capital will be required of these broker-dealers in all instances.

2. Amendment to Standards of Financial Responsibility Applied to Banks and Trust Companies Using Mutual Fund Services and Insurance Processing Service

Addendum B currently requires that banks and trust companies that are applying to be or are Mutual Fund/Insurance Services Members under Rule 2 have $100,000 minimum excess net capital over the capital requirement imposed by the applicable State or Federal regulatory authority. Addendum I is silent on the criteria applicable to banks and trust companies for purposes of being Fund Members under Rule 51.

Under the proposed rule change, the standards of financial responsibility applicable to banks and trust company applicants applying to use and members using Mutual Fund Services and Insurance Processing Services will be applicable both to Mutual Fund/Insurance Services Members under Rule 2 and to Fund Members under Rule 51.

Under the proposed standard, a bank or trust company will be required to have a Tier 1 risk-based capital ratio of at least 6% or greater. A trust company which is not required to calculate a risk-based capital ratio by its regulators will be required to have at least $2,000,000 in capital.

As applied to banks, the revised criteria will apply the standard adopted by the Federal Deposit Insurance Corporation (''FDIC'') to compute risk-based capital ratios. The proposed standard of a minimum Tier 1 risk-based capital ratio of 6% is currently categorized as ''well-capitalized'' under the guidelines issued by the Board of Governors of the Federal Reserve System. All current NSCC Mutual Fund/Insurance Services Members and Fund Members that are banks exceed this requirement.

With respect to trust companies, the current standard of $100,000 in excess capital over the capital required by applicable State or Federal regulations will be replaced by a requirement that all trust companies have $2,000,000 in capital. Because State regulations vary in their respective capital requirements and because some States do not a have a capital requirement, the revised criteria will provide a uniform and consistent standard to all trust companies regardless of whether they are members of the Federal Reserve System or subject to nonuniform State regulatory requirements. The proposed $2,000,000 capital requirement is the same capital standard required for membership in The Depository Trust Company.

Some trust companies which are not required to calculate a Tier 1 risk-based capital ratio pursuant to FDIC or Federal Reserve Act requirements calculate this ratio for other purposes. NSCC will therefore accept as an alternative to the minimum $2,000,000 capital requirement the 6% Tier 1 risk-based capital ratio from those trust companies which provide this calculation for regulatory purposes.[6]

NSCC currently has sixty-six bank/trust company members to which the revised capital requirements will apply. Only one trust company has been identified as not meeting the new standard.

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.[7] The Commission finds that NSCC's proposed rule change is consistent with this requirement because by enhancing the standards of financial responsibility applicable to NSCC members using NSCC's Mutual Fund Services and Insurance Processing Service, it should help NSCC protect itself and its members from undue financial risk. As a result, the proposal should help NSCC assure the safeguarding of securities and funds which are in its custody or control.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed

[4] Securities Exchange Act Release No. 33525 (January 26, 1994), 59 FR 9805.

[5] Securities Exchange Act Release No. 40081 (June 10, 1998), 63 FR 32905. A municipal securities broker under Rule 15c3–1(a)(8) of the Act is required to maintain $100,000 in excess net capital, and a clearing broker is required to maintain $1,000,000 in excess net capital.

[6] The proposed rule change makes a technical amendment to Addendum B regarding the capital standards applicable to bank applicants for full membership under NSCC Rule 2. In particular, the proposed rule change amends Section I.B.2.(a)(i) by replacing the listed components of bank capital with a reference to bank capital as it is defined in the Consolidated Report of Condition (''CALL Report'').

[7] 15 U.S.C. 78q–1(b)(3)(F).

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,[8] that the proposed rule change (File No. SR–NSCC–2003–22) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–655 Filed 2–16–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51188; File No. SR–NYSE–2004–63]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Amend Exchange Rules Relating to the Return of Membership Certificates, Notice and Return of Exchange-Issued Identification Cards, and Minor Violations of Rules

February 10, 2005.

On November 1, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 to: (1) Delete the requirement in NYSE Rule 343(d) to return certificates of membership upon termination of customer offices or status as a member organization; (2) add NYSE Rule 35.80 to require members and member organizations to notify the Exchange's security office and surrender Exchange-issued identification cards within 24 hours of all employee terminations, re-assignments to non-Floor duties, or cancellations of such identification cards; (3) rescind NYSE Rule 412(g), which currently allows the Exchange to impose fees of up to $100 per securities account per day for violations of NYSE Rule 412; and (4) enable violations of proposed NYSE Rule 35.80 to be administered through the Exchange's minor rule violation plan (NYSE Rule 476A). On December 15, 2004 and December 23, 2004, the Exchange filed Amendment Nos. 1[3] and 2[4] to the proposed rule change, respectively.

The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on January 7, 2005.[5] The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[7] because rules that are reasonably designed to strengthen the Exchange's security procedures will protect investors and the public interest. The Commission also believes that the Exchange's addition to its minor rule violation plan is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[8] which require that the rules of an exchange enforce compliance and provide appropriate discipline for violations of Commission and Exchange rules. In addition, because NYSE Rule 476A provides procedural rights to a person fined under that rule to contest the fine and permit a hearing on the matter, the Commission believes the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.[9]

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act[10] which governs minor rule violation plans. The Commission believes that the change to the Exchange's minor rule violation plan will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with NYSE rules and all other rules subject to the imposition of fines under the Exchange's minor rule violation plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the Exchange's minor rule violation plan provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on case-by-case basis, whether fines of more or less than the recommended amount are appropriate for violations under the minor rule violation plan or a violation requires formal disciplinary action.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act[11] and Rule 19d–1(c)(2) under the Act,[12] that the proposed rule change (SR–NYSE–2004–63), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–653 Filed 2–16–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51184; File No. SR–PCX–2004–129]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Minimum Price Improvement Standards

February 10, 2005.

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

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated December 15, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange included current rule text that was omitted from the original rule filing and made technical changes to the rule text. Amendment No. 1 replaced the original filing in its entirety.

[4] *See* Partial Amendment dated December 23, 2004 (''Amendment No. 2''). In Amendment No. 2, the Exchange: (i) submitted the proposed rule text changes in an Exhibit 4, which was inadvertently omitted from Amendment No. 1; and (ii) made minor technical corrections to the existing and proposed rule text.

[5] *See* Securities Exchange Act Release No. 50942 (December 29, 2004), 70 FR 1487.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[9] 15 U.S.C. 78f(b)(7) and 78f(d)(1).

[10] 17 CFR 240.19d–1(c)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 240.19d–1(c)(2).

[13] 17 CFR 200.30–3(a)(12) and 200.30–3(a)(44).