

out its responsibilities under the Exchange Act.

It is estimated that 10 respondents will utilize this application procedure annually, with a total burden of 1,750 hours, upon past submissions. This figure is based on 10 respondents, spending approximately 275 hours each. Each respondent submitted approximately 110 responses. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d-1 for each submission is 2.5 hours. The average cost per hour, per each submission is approximately \$101. Therefore, the total cost of compliance for all the respondents is \$277,750. (10 respondents \times 110 responses per respondent \times 2.5 hrs per response \times \$101 per hour).

The filing of notices pursuant to the Rule is mandatory for the SROs, but does not involve the collection of confidential information. Rule 19d-1 does not have a retention of records requirement.

Rule 19d-3 under the Exchange Act prescribes the form and content of applications to the Commission for review of final disciplinary sanctions, denials of membership, participation or association or prohibitions or limitations of access to services that are imposed by SROs. The Commission uses the information provided in the application filed pursuant to Rule 19d-3 to review final actions taken by SROs including: (1) Disciplinary sanctions; (2) denials of membership, participation or association; and (3) prohibitions on or limitations of access to SRO services.

It is estimated that approximately 50 respondents will utilize this application procedure annually, with a total burden for all respondents of 900 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d-3 to complete each submission is 18 hours. The average cost per hour is approximately \$101, for completion of each submission. Therefore, the total cost of compliance for all respondents, per year is \$90,900. (50 submissions \times 18 hours \times \$101 per hour).

A respondent is not required to retain the Rule 19d-3 submission for any specified period of time. The filing of a motion seeking review of a final action is mandatory only if the respondent wants Commission review. The submission does not involve the collection of confidential information.

Rule 19h-1 under the Exchange Act prescribes the form and content of notices and applications by SROs regarding proposed admissions to, or

continuances in, membership, participation or association with a member of any person subject to a statutory disqualification.

The Commission uses the information provided in the submissions filed pursuant to Rule 19h-1 to review decisions of SROs to permit the entry into or continuance in the securities business of persons who have committed serious misconduct. The filings submitted pursuant to the Rule also permit inclusion of an application to the Commission for consent to associate with a member of an SRO notwithstanding a Commission order barring such association.

The Commission reviews filings made pursuant to the Rule to ascertain whether it is in the public interest to permit the employment in the securities business of persons subject to statutory disqualification. The filings contain information that is essential to the staff's review and ultimate determination on whether an association or employment is in the public interest and consistent with investor protection.

It is estimated that approximately 5 respondents will make submissions pursuant to this Rule annually with a total burden of 225 hours for all respondents to complete all submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19h-1 is 4.5 hours per submission. The average cost per hour is approximately \$101 for completion of each submission. Therefore, the total cost of compliance for all respondents is \$22,725. (50 responses \times 4.5 hours per response \times \$101 per hour).

A respondent is not required to retain the Rule 19h-1 submission for any specified period of time. The filing of notices is mandatory but does not involve the collection of confidential information.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must

be submitted to OMB within 30 days of this notice.

Dated: June 15, 2001.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44431; File No. SR-NSCC-2001-04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change To Modify and Consolidate Clearing Fund Rules

June 15, 2001.

On April 24, 2001, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on April 30, 2001, amended a proposed rule change (File No. SR-NSCC-2001-04) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on May 15, 2001.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the proposal, NSCC will consolidate its clearing fund rules and standards of financial responsibility and operational capacity, currently found in various rules and procedures, into Procedure XV³ of its Rules and Procedures.

Under Addendum O,⁴ NSCC collects additional clearing fund deposits from settling members on surveillance. The additional clearing fund deposits are based on a risk-based margining ("RBM") methodology that includes, but is not limited to, calculations based on portfolio volatility and, where applicable, market maker domination. The rule change extends these RBM requirements to all NSCC members in

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 44276 (May 8, 2001), 66 FR 26895.

³ NSCC's main clearing fund formulas are found in its Procedure XV.

⁴ Securities Exchange Act Release Nos. 37202 (May 10, 1996), 61 FR 24993 [File No. SR-NSCC-95-17]; 38622 (May 19, 1997), 62 FR 27285 [File No. SR-NSCC-97-04]; 40034 (May 27, 1998), 63 FR 30277 [File No. SR-NSCC-98-03]; 41478 (June 4, 1999), 64 FR 31664 [File No. SR-NSCC-99-06]; 42864 (May 30, 2000), 65 FR 36204 [File No. SR-NSCC-99-09] (Commission approval date corrected in **Federal Register**, 65 FR 42065); and 44277 (May 8, 2001) [File No. NSCC-2001-05].

lieu of NSCC's current allocation and liquidation clearing fund requirements.

Since the Commission's approval of Addendum O in 1996, NSCC has studied the impact of RBM on member firms. NSCC found that utilization of RBM more accurately reflects NSCC's exposure than the allocation and liquidation formulae being replaced because it enables NSCC to more precisely identify the risks posed by a member's unsettled portfolio and, as a result, more quickly adjust and collect additional clearing fund deposits. NSCC management therefore recommended and the Membership and Risk Management Committee concurred that RBM methodologies should be applied to all NSCC members, not just those on surveillance.

The rule change modifies NSCC's clearing fund requirements (Procedure XV) as follows:

- With respect to clearing fund requirements for CNS transactions, Procedure XV's allocation [current Section A.I.(a)(i)(a)] and liquidation [current Section A.I.(a)(i)(c)] formulae will be replaced with RBM methodology, specifically volatility [new Section I.(A)(1)(a)] and market maker domination [new Section I.(A)(1)(c)] calculations, currently found in Addendum O. The volatility formula will continue to permit NSCC to utilize any generally accepted portfolio volatility model to calculate volatility.

- In addition, the clearing fund requirements will continue to provide that NSCC may exclude from volatility calculations net unsettled positions in classes of securities whose volatility is (1) less amendable to statistical analysis, such as OTC Bulletin Board or Pink Sheet issues or issues trading below a designated dollar threshold (e.g., five dollars) or (2) amendable to generally accepted statistical analysis only in a complex manner, such as municipal or corporate bonds. The amount of clearing fund required with respect to these net unsettled positions will be determined by multiplying the absolute value of the net unsettled positions by a percentage designated by NSCC. This percentage will not be less than 10% with respect to the positions covered by item (1) above and will not be less than 2% with respect to the positions covered by item (2) above.

- The clearing fund requirements for all when-issued and when-distributed transactions will be consolidated with the calculations for regular way transactions.

- The third prong of the CNS formula, the calculation of the difference between the contract price and the current market price of compared

pending positions, will remain the same [current Sections I.(A)(1)(b) and I.(A)(2)(b)]; however, these calculations will now be undertaken on a daily basis instead of on a twenty day rolling basis.

- Members will be required to make within one hour of demand all clearing fund and other required deposits. To the extent a member is meeting its obligation with (1) a deposit of cash, the cash deposit must be made by Federal Funds wire transfer and must be received no later than fifteen minutes prior to the close of the Federal Funds wire or (2) a delivery of eligible securities, the delivery of eligible securities must be received within the deadlines established by a qualified securities depository.⁵ The rule change further provides that, at the discretion of NSCC, these cash deposits may be included as part of the member's daily settlement obligation.

- Addendum B, among other things, currently specifies thresholds pursuant to which NSCC will require additional clearing fund deposits. Procedure XV [new Section II.(C)] will now provide that additional clearing fund deposits shall not be requested where the amount of the deficiency for a: (1) Member on Class A or B Surveillance is equal to or less than \$5,000 and such amount is less than 5% of such member's actual deposit; (2) member on Advisory Surveillance is equal to or less than \$20,000 and such amount is less than 5% of such member's actual deposit; or (3) member not on any surveillance is equal to or less than \$50,000 and such amount is less than 10% of the member's actual deposit.

- Other changes to Procedure XV result from relabeling and/or moving the placement of NSCC's clearing fund requirements without altering their substantive nature.

As described below, NSCC intends to begin implementing the revised clearing fund methodologies on June 15, 2001, and to have all members subject to them by December 31, 2002. Members currently subject to Addendum O will be subject to these clearing fund changes on June 15, 2001. Applicants approved for NSCC membership from and after April 24, 2001, the date of the proposed rule change filing, will also be subject to these rule changes on June 15, 2001. Members who have a position which will subject them to a deposit requirement based on the market maker domination calculations will also be subject to these rule changes on June 15, 2001. NSCC will place every remaining member into deciles and will apply the

revised clearing fund methodologies pursuant to a step-by-step, decile-by-decile plan based upon the volatility classification of each such member's unsettled portfolio. Accordingly, members with the most volatile portfolios will be subject to these rule changes first, on or shortly after June 15, 2001, provided, however, that to the extent any such member has significant CNS obligations resulting from options exercises and assignments or is a municipal securities brokers' broker, it will be subject to these rule changes in conjunction with or after all other members but in no event later than December 31, 2002.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.⁶ The Commission believes that the approval of NSCC's rule change is consistent with this section because utilization of RBM should enable NSCC to more precisely identify the risks posed by a member's unsettled portfolio and, as a result, more quickly adjust and collect additional clearing fund requirements than the current allocation and liquidation formulae. As a result NSCC is better protected from the possibility of a member's default because the clearing fund deposits it collects more accurately reflect NSCC's exposure.

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-2001-04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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⁵ Under NSCC rules, currently the only qualified securities depository is DTC.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 17 CFR 200.30-3(a)(12).