

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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-97-15 and should be submitted by October 20, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39110; File No. SR-NSCC-97-07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of a Proposed Rule Change Relating to Changes in Membership Standards

September 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 5, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") 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 from

interested persons on the proposed rule change.

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

The proposed rule change will amend NSCC's membership standards to increase the minimum excess net capital requirements imposed on members and applicants 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 such statements.²

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

The purpose of the proposed rule change is to amend NSCC's membership standards to increase the amount of net capital required over the Commission's minimum net capital requirements ("excess net capital").³ Currently, the excess net capital requirement for all members is \$50,000. The proposed amendments: (i) Will increase the excess net capital requirement for full service members to \$500,000 except for municipal securities brokers' brokers⁴ for which the excess net capital requirement will be \$100,000⁵ and (ii) will increase the excess net capital requirement for members that clear for other broker-dealers to \$1,000,000.

NSCC's current excess net capital requirements were implemented in 1976 when NSCC was formed. The environment in which NSCC members operate has changed significantly since that time. In terms of the change in the value of money alone, \$50,000 in 1976 dollars is worth nearly \$150,000 today. Trading volumes and the average value

of securities traded have increased even more significantly. The Commission also has changed its minimum net capital requirements for most NSCC members during this time period from \$25,000 (*i.e.*, one-half of NSCC's current excess net capital requirement) to \$250,000 (*i.e.*, one-half of NSCC's proposed excess net capital requirement).⁶

As a result of the changing environment, it has been NSCC's recent experience that when a member with less than \$500,000 in excess net capital has problems with even one transaction that would not be considered large by today's standards, concerns arise with respect to that member's ability to settle on a timely basis and to post additional required collateral with NSCC. Additionally, even though the size of the exposure due to the failure of any one of these small firms is relatively small, NSCC believes that the time and resources that it must spend addressing problems related to small firms is disproportionate to the magnitude of the potential loss and is unjustifiably disruptive of NSCC's daily surveillance process.

NSCC also believes that the owners or principals of an NSCC member should have a meaningful amount of their own assets at stake to absorb losses before a member's excess net capital falls below regulatory minimums and the member is required to cease doing business. NSCC believes that this provides a strong motivation for firms to implement appropriate risk management controls on their own. In today's environment, NSCC does not believe that \$50,000 is a meaningful amount and believes that \$500,000 is a more appropriate amount.⁷

In addition, NSCC has recognized that members that clear for other broker-dealers present special risks to the clearance and settlement process. These firms become legally responsible for the settlement of transactions of other firms and generally do not have complete control over those transactions. Many of these firms have surveillance procedures and other risk controls in place and can cease clearing for a correspondent broker-dealer if they perceive that a risk has developed. But the clearing arrangements of these firms and marketplace rules generally require that the clearing firm (*i.e.*, the NSCC member) take on settlement responsibility for most of the

² The Commission has modified the text of the summaries prepared by NSCC.

³ The minimum net capital requirements are set forth in Rule 15c3-1(a) under the Act. 17 CFR 240.15c3-1(a).

⁴ "Municipal securities brokers' broker" is defined in Rule 15c3-1(a)(8) under the Act. 17 CFR 240.15c3-1(a)(8).

⁵ NSCC believes that this is consistent with the Commission's approach of maintaining separate capital rules for municipal securities brokers' brokers.

⁶ See 17 CFR 240.15c3-1(a)(2)(i).

⁷ Under the proposed rule change, NSCC will maintain its current right to impose higher capital requirements on members depending on the circumstances and type of business that the member is in.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

correspondent broker-dealer's transactions before the clearing firm has had a chance to review such transactions. This increases the possibility that a clearing firm will be responsible for problematic or risky transactions. In light of the higher risk presented by these firms, NSCC believes that they should be subject to higher minimum capital standards.

Currently, twenty-nine NSCC members do not meet the proposed \$500,000 standard for full service members. For this reason, NSCC proposes that the new standard become effective on the later of (a) one year from the date of publication in the **Federal Register** of the notice of the filing of this rule change or (b) the date of Commission approval of this rule change. NSCC believes that this effective date will give those firms sufficient time to obtain appropriate capital infusions or make other clearing arrangements.

In addition, two NSCC members that clear for other broker-dealers do not meet the \$1,000,000 standard. Therefore, NSCC proposes that this new standard become effective on the later of (a) six months from the date of publication in the **Federal Register** of the notice of the filing of this rule change or (b) the date of Commission approval of this rule change. NSCC believes that this effective date will give those firms sufficient time to obtain appropriate capital infusions.

During the interim period, if any, between Commission approval of this rule change and its effective date, NSCC will not consider applicants that do not meet the new minimum capital standards other than those firms applying for membership in connection with the agreement between NSCC and the Stock Clearing Corporation of Philadelphia ("SCCP") under which SCCP has agreed to cease operations as a clearing corporation.

In view of the facts that: (i) The costs of surveillance and of collateral collection procedures in both time and resources falls on NSCC and all of its members and that these costs are disproportionately high relative to the size of the potential loss for members with less than \$500,000 in excess net capital, (ii) the default or insolvency of any settling member potentially imposes burdens and costs on NSCC and all of its members, and (iii) the changes proposed by this filing are meant to reduce these burdens and costs, NSCC believes that this filing is consistent with Section 17A of the Act⁸ and the rules and regulations thereunder.

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

NSCC does not believe that the proposed rule change will impose a burden on competition. In fact, NSCC believes that the proposed rule change will rectify a burden on competition that has slowly developed due to changing circumstances by having the costs of risk management more equitably borne by all NSCC members and by requiring all firms to have a meaningful amount of capital at risk. NSCC believes the increased capital requirements better reflect current marketplace realities.

(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 NSCC 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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-97-07 and should be submitted by October 20, 1997.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39098; File No. SR-NYSE-97-14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Shareholder Approval Policy

September 19, 1997.

I. Introduction

On May 16, 1997, the New York Stock Exchange, Inc., ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 relating to amendments to its Shareholder Approval Policy.³ The proposed rule change was published for comment in Securities Exchange Act Release No. 38716 (June 5, 1997), 62 FR 32135 (June 12, 1997). No comment letters were received, however, on August 8, 1997, the Exchange submitted a letter in support of its filing.⁴

II. Description of the Proposal

Currently, the Exchange's shareholder approval policy requires a listed company to obtain shareholder approval in four situations:

- **Related-Party Transactions:** when selling more than one percent of the company's stock, for either cash or other assets, to a "related party," define to mean officers, directors and holders of five percent or more of the company's common stock (or stock with five

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The NYSE's Shareholder Approval Policy is contained in Paragraphs 312.03 through 312.05 of the Exchange's Listed Company Manual.

⁴ Letter from Noreen M. Culhane, Senior Vice President, Listings and Client Service, NYSE, to Howard Kramer, Associate Director, Division of Market Regulation, Commission (August 7, 1997).

⁸ 15 U.S.C. 78q-1.