Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–32 and should be submitted by November 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–27135 Filed 10–20–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43441; File No. SR–NASD–00–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Delivery Requirement of a Margin Disclosure Statement to Non-Institutional Customers

October 12, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 5, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On September 26, 2000, the NASD submitted Amendment No. 1 to the proposed rule change.[3] 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

NASD Regulation is proposing to add a new NASD Rule 2341 to require its members to deliver to their non-institutional customers, prior to or at the opening of a margin account, a specified disclosure statement that discusses the operation of margin accounts and the risk associated with trading on margin. NASD Regulation also proposes to require NASD members to deliver the specified disclosure statement to their non-institutional customers with margin accounts on an annual basis. Below is the test of the proposed rule change. Proposed new language is in *italics.*

Rule 2341. Margin Disclosure Statement

(a) No member shall open a margin account, as specified in Regulation T of the Board of Governors of the Federal Reserve System, for or on behalf of a non-institutional customer, unless, prior to or at the time of opening the account, the member has furnished to the customer, individually, in writing or electronically, the following margin disclosure statement:

Your brokerage firm is furnishing this document to you to provide some basic facts abut purchasing securities on margin, and to alert you to the risks involved with trading securities in a margin account. Before trading stocks in a margin account, you should carefully review the margin agreement provided by your firm. Consult your firm regarding any questions or concerns you may have with your margin accounts.

When you purchase securities, you may pay for the securities in full or you may borrow part of the purchase price from your brokerage firm. If you choose to borrow funds from your firm, you will open a margin account with the firm. The securities purchased are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan and, as a result the firm can take action, such as issue a margin call and/or sell securities in any of your accounts held with the member, in order to maintain the required equity in the account.

It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

- *You can lose more funds than you deposit in the margin account A decline in the value of securities that are purchased on margin may require you to provide additional funds to the firm that has made the loan to avoid the forced sale of those securities or other securities in your account(s).*
- *The firm can force the sale of securities in your account(s). If the equity in your account falls below the maintenance margin requirements of the firm's higher ''house'' requirements, the firm can sell the securities in any of your accounts held at the firm to cover the margin deficiency. You also will be responsible for any short fall in the account after such a sale.*
- *The firm can sell your securities without contacting you. Some investors mistakenly believe that a firm must contact them for a margin call to be valid, and that the firm cannot liquidate securities in their accounts to meet the call unless the firm has contacted them first, This is not the case. Most firms will attempt to notify their customers of margin calls, but they are not required to do so. However, even if a firm has contacted a customer and provided a specific date by which the customer can meet a margin call, the firm can still take necessary steps to protect its financial interests, including immediately selling the securities without notice to the customer.*
- *You are not entitled to choose which securities in your account(s) are liquidated or sold to meet a margin call. Because the securities are collateral for the margin loan, the firm has the right to decide which security to sell in order to protect its interests.*
- *The firm can increase its ''house'' maintenance margin requirements at any time and is not required to provide you advance written notice. These changes in firm policy often take effect immediately and may result in the issuance of a maintenance margin call. Your failure to satisfy the call may cause the member to liquidate or sell securities in your account(s).*
- *You are not entitled to an extension of time on a margin call. While an extension of time to meet margin requirements may be available to customers under certain conditions, a customer does not have a right to the extension.*

[11] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NASD Regulation proposes to amend the proposed rule language. Specifically, Amendment No. 1 clarifies that if the equity in a customer's margin account falls below applicable requirements, an NASD member firm can force the sale of any of the securities in any of the customer's accounts held at the firm and such liquidations are not limited to the customer's margin account. Additionally, NASD Regulation deletes the phrase ''under the law'' from its original filing to clarify that maintenance margin requirements are requirements of self-regulatory organizations. *See* Letter from Alden S. Adkins, General Counsel and Senior Vice President, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 25, 2000.

(b) Members shall, with a frequency of not less than once a calendar year, deliver individually, in writing or electronically, the disclosure statement described in paragraph (a) to all non-institutional customers with margin accounts.

(c) In lieu of providing the margin disclosure statement specified in paragraph (a), a member may provide to the customer an alternative disclosure statement, provided that the alternative disclosure statement shall be substantially similar to the disclosure statement specified in paragraph (a).

(d) For purposes of this Rule, the term ''non-institutional customer'' means a customer that does not qualify as an ''institutional account'' under Rule 3110(c)(4).

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

a. *Background.* The recent growth in the level of customer margin account balances, coupled with the increase in customer inquiries and complaints to NASD Regulation and SEC staffs relating to the handling of margin accounts, has raised concerns as to whether investors understand the operation and risks associated with margin trading. NASD Regulation believes that investors' misconceptions about margin requirements, particularly with respect to maintenance margin, may cause investors to underestimate the risks of margin trading and to misunderstand the operation of and reasons for margin calls.

In this regard, a recent report issued by the General Accounting Office (''GAO'') noted that the SEC has determined from the customer complaints it has received that many investors who traded on-line did not understand margin requirements.[4] The lack of disclosures relating to when firms would sell securities in a margin account to cover margin loans was among the leading margin-related complaints that the SEC received.

The GAO Report also collected and summarized information from 12 on-line broker-dealers.[5] All of the on-line firms contacted did provide their customers the limited information currently required on margin trading.[6] Some firms also provided additional information relating to margin, such as requirements for account opening, procedures for selling securities to cover account losses, or special requirements for volatile stocks. However, nearly half of the firms contacted automatically opened margin accounts for new customers without providing the customer information relating to the risks associated with margin trading. At three firms that automatically[7] opened margin accounts, customers would find out about their account type only if they read and understood their account agreements, which SEC staff indicated were written in legal language and may be difficult for investors to understand. Three of the 12 on-line broker-dealers contacted did take ''extra measures'' to ensure that their customers understood that stocks could be sold to cover outstanding loans in a margin account. These firms included information on their web sites that explained that accounts could be liquidated in fast-moving markets before the customary period.

The GAO Report concluded that better investor protection information, including information relating to margin requirements, was needed on web sites of some on-line broker-dealers. In this regard, the GAO Report recommended that the SEC ensure that broker-dealers with on-line trading systems include accurate and complete information on their web sites regarding, among other things, margin requirements.

b. *Specific Areas of Concern.* Based on customer complaints and inquiries it has received, NASD Regulation identified several areas associated with margin trading that may have generated confusion and misunderstanding between NASD customers and members. These include:

i. *Margin Calls—Notification.* Some investors hold the mistaken belief that their broker-dealer must contact them for a margin call to be valid, and that their broker-dealer cannot liquidate securities in their account to meet the call unless a specified number of days have passed and/or the broker-dealer has contacted the customer. There are no such restrictions in Regulation T[8] of the Board of Governors of the Federal Reserve System or NASD Rule 2520.[9] Moreover, securities that have been purchased on margin by a customer are collateral for the margin loan and are, therefore, subject to the security claim of the broker-dealer until the customer fully pays for the securities. Thus, if a broker-dealer believes that the collateral for the margin loan is at risk, the broker-dealer is entitled to take any steps necessary to protect its financial interests, including immediate liquidation without notice to the customer. Some broker-dealers will attempt to notify their customers of margin calls, but they are not required to do so. However, even if a broker-dealer has contacted a customer and provided a specific date by which the customer can meet a margin call, the broker-dealer can still take necessary steps to protect its financial interests, including immediate liquidation, without further notice to the customer.

ii. *Extensions of time on margin calls.* Some investors believe they are automatically entitled to an extension of time to meet margin calls. While an extension of time to meet initial margin requirements may be available to the customer under certain conditions, it is only granted if the clearing firm chooses to request an extension from its Designated Examining Authority; the customer does not have a right to an automatic extension.

In addition, some investors believe that when a maintenance margin call

[4] *See On-Line Trading, Better Investor Protection Information Needed,* Report to Congressional Requesters, GAO, GGD–00–43 (May 2000) (the ''GAO Report''). According to the GAO Report, between January 1998 and June 1999, 140 margin-related complaints concerning on-line trading firms were submitted to the SEC.

[5] These firms represented less than 10 percent of the total estimated number of firms that offer on-line trading. However, they accounted for about 90 percent of the on-line trading volume during early 1999.

[6] Rule 10b–16 under the Act (''SEC Rule 10b–16'') requires broker-dealers that extend credit to customers to finance securities transactions to furnish, in writing, specified information regarding the terms of the loan. These disclosures must be made on both an initial and periodic basis. For example, at the time a customer opens a margin account, the broker-dealer must provide the customer with a written statement disclosing, among other things, the annual rate of interest, the method of computing interest, and what other credit charges may be imposed.

[7] Those firms that provided clear indications of the type of account to be opened offered their customers the option on the web site to choose either a cash or margin account, or both. However, those firms that automatically opened margin accounts only offered new customers a choice with respect to account ownership, such as joint or individual account.

[8] 12 CFR 220 *et seq.*

[9] NASD Rule 2520 governs margin requirements.

has been issued they are entitled to one or more extensions of time to meet the call; however, there is no mechanism for extending maintenance margin calls. If the customer fails to meet a maintenance margin call, the broker-dealer can, under certain circumstances, take a charge to its net capital in lieu of collecting the call, but the broker-dealer is not required to do so, and the customer has no right to demand it.

iii. *Right to dictate which security is liquidated.* Some investors believe that they have the right to control which securities are liquidated to meet a maintenance margin call if there is more than one security in the NASD customer's accounts.[10] There is no provision in the margin rules that gives the customer the right to control liquidation decisions. As discussed above, because the securities are collateral for the margin loan, the broker-dealer has the right to control the disposition of the collateral in order to protect its interests. In this regard, the broker-dealer may choose which securities in the margin account, or any other account held by NASD member on behalf of the customer, to liquidate, and this selection need not relate to factors associated with the individual customer.[11] For example, the NASD broker-dealer may choose a particular security in a customer's account to liquidate based on a high concentration of the security held by customers firm-wide.

iv. *NASD members raising their maintenance margin requirements.* Some NASD members have increased their ''house'' maintenance margin requirements as a result of concerns about the volatility and extreme price run-ups on certain stocks, the risks to their customers, and the NASD member's own potential exposure to losses from margin defaults. These changes in policy often take effect immediately and may result in the issuance of a maintenance margin call. A customer's failure to satisfy the call will usually cause the NASD member to liquidate a portion of the customer's account.

Some investors believe that an NASD member must provide thirty days written notice before implementing this type of change. While SEC Rule 10b-16 requires members to disclose to customers the credit terms (interest rates and methods of calculating interest) for margin transactions and requires advance written notice of such changes, it does not require advance notice of the amount of margin required.

C. *Proposed Requirements.* Although NASD Regulation recognizes that some NASD members are providing additional disclosures to customers relating to margin, the content of these disclosures is not consistent from firm to firm and may not always be in a form that is understandable to investors. Thus, NASD Regulation proposes to implement a new NASD Rule 2341 that would require NASD members to deliver a disclosure statement that includes all the ''bulleted'' information as specified in the proposed NASD Rule 2341, or a substantially identical disclosure statement[12] to their non-institutional customers.[13] NASD members would be required to deliver the mandated disclosure statement, in writing or electronically, to customers individually,[14] prior to or at the opening of a margin account. NASD Regulation also would require NASD members to deliver the mandated disclosure statement annually to all of their non-institutional customers with margin accounts. NASD members would be required to provide the mandated disclosure statement to existing margin customers at the time the NASD member is required to send the next annual statement to the customer (following the effective date of the rule change), but not to exceed 180 days following the effective date of the rule change.

The mandated margin disclosure statement would: (1) Describe the operation of a margin account; (2) emphasize that customers should carefully review their margin agreements; and (3) clarify some of the risks associated with margin trading, including among others, that the customer can lose more funds than initially deposited, the firm can force the sale of the securities in the customer's account(s) held by the firm without notice to the customer, the firm can dictate which security is selected for liquidation, and the customer is not entitled to an extension of time on a margin call.

NASD members would be permitted to develop an alternative margin disclosure statement, provided that the alternative disclosure statement is substantially similar to the mandated disclosure statement and incorporates all of the relevant concepts. Under the proposed rule change, disclosure at or prior to the opening of the account would be made in a separate document, even if an NASD member firm chooses to deliver the margin disclosure statement as part of or within the margin agreement or other opening account documentation.[15] However, with respect to the annual disclosure statement requirement, NASD members would be permitted to provide the margin disclosure statement within other documentation, such as the customer account statement.

NASD Regulation intends to announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval of the proposed rule change. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval of the proposed rule change. With respect to the annual delivery requirement, members would be required to provide the margin disclosure statement to each existing margin customer at the time the member is required to send the next annual statement to the NASD customer (following the effective date of the rule change), but not to exceed 180 days following the effective date of the rule change.

2. Statutory Basis

NASD Regulation beleives that the proposed rule change is consistent with Section 15A(b)(6)[16] of the Act, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation

[10] *See* Amendment No. 1, *supra* note 3.

[11] *Id.*

[12] NASD Regulation represents that it will determine whether an alternative disclosure statement contains substantially identical information as required by the proposed NASD Rule 2341 at its examination of the particular NASD firm. Telephone conversation between Stephanie Dumont, Counsel, NASD Regulation, and Hong-anh Tran, Special Counsel, Division, Commission, September 28, 2000.

[13] The term ''non-institutional customer'' would mean a customer that does not qualify as an ''institutional account'' under NASD Rule 311(c)(4). NASD Rule 3110(c)(4) defines ''institutional account'' to mean the account of: (1) a bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or agency or office performing similar functions); or (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

[14] Members would be required to deliver the disclosure statement to each customer individually. A member firm posting the disclosure statement on its web site would not fulfill the proposed delivery requirements.

[15] NASD Regulation represents that an NASD member firm may choose to deliver the disclosure statement or other opening account documentaiton on a separate page of, or as an attachment to, the margin agreement. Telephone conversation between Stephanie Dumont, Counsel, NASD Regulation, and Sapna Patel, Law Clerk, Division, Commission, October 12, 2000.

[16] 15 U.S.C. 78*o*–3(b)(6).

believes that the proposed rule change will provide non-institutional customers, who may have margin accounts with NASD members, with a better understanding of the operation of a margin account and the risks associated with margin trading.

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

NASD Regulation does not believe that the proposed rule change will result in 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 is consistent with the Act. The Commission is specifically soliciting comments on whether the proposed disclosure is sufficient and non-misleading, or whether changes to the disclosure statement should be made. For example, the Commission is concerned that the proposed rule language would not require NASD member firms to disclose to customers that any and all assets, including securities or any other property the customer has on account at the member firm and any of its affiliates, whether carried individually or jointly with others, may, depending on the margin agreement, be used by the broker-dealer to satisfy a maintenance margin call. Should broker-dealer disclose this fact? Are other changes to the proposed disclosure merited? Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–55 and should be submitted by November 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–27138 Filed 10–20–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43447; File No. SR–NSCC–00–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Related to Mutual Fund Services

October 16, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 7, 2000, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change and on April 19, 2000, and May 8, 2000, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[17] 17 CFR 200.30–3(a)(12).

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

[2] A copy of NSCC's proposed rule change, the attached exhibits, and amendments are available at the Commission's Public Reference Section and the principal office of NSCC.

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

The proposed rule change will modify NSCC's rules to permit additional types of investment products to be processed through NSCC's Mutual Fund Services.

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.[3]

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

1. Purpose

NSCC participants who utilize NSCC's Defined Contribution Clearance and Settlement Service of NSCC's Mutual Fund Services and who recognize the value of processing investment product transactions through NSCC have requested that NSCC permit additional types of investment products regulated under state insurance laws or federal or state banking laws to be eligible for processing through NSCC's Mutual Fund Services. Examples of ''Investment Funds'' include stable value funds, separate account group guaranteed investment contracts (which are regulated as group annuities), and collective bank investment trust. Asset classes of these types are typically included in defined contribution retirement plans and thus their inclusion in Mutual Fund Services will benefit third party administrator (''TPA'') members and other participants by standardizing their processing of these Investment Funds in the same manner as mutual funds are now processed under NSCC's mutual fund services. Standardized processing will permit defined contribution plan administrators to provide Investment Fund products to defined contribution plan clients without the systems or manual processing infrastructure and related costs required by the current processing methods.

[3] The Commission has modified the text of the summaries prepared by NSCC.