

including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2004-035. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2004-035 and should be submitted by April 12, 2004.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49422; File No. SR-NSCC-2003-20]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Eliminate the Higher Capital Requirements Imposed on Members for Processing Investment Fund Transactions Through NSCC's Mutual Fund Services

March 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 9, 2003, the National Securities

Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on October 22, 2003, amended 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 the proposed rule change is to amend the standards of financial responsibility required for certain NSCC applicants and members using NSCC's Mutual Fund and Insurance Services. Specifically, the proposed rule change will delete Addendum V to NSCC's Rules thereby eliminating the higher capital requirements imposed on NSCC Mutual Fund/Insurance Services Members and Fund Members processing Investment Funds transactions 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.²

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

Mutual Fund Services are non-guaranteed services offered by NSCC under NSCC Rule 52. In November 2000, NSCC expanded the types of products eligible for processing through NSCC's Mutual Fund Services to include "Investment Funds."³ An Investment Fund is defined in Rule 1 of NSCC's Rules as a "fund or investment entity subject to regulation under applicable federal and state banking and/or insurance laws." Examples of such funds include stable value funds, guaranteed investment contracts which

are regulated as group annuities, and collective bank investment trusts.

NSCC adopted Addendum V, "Financial Standards for Applicants and Participants Processing Investment Fund Transactions through Mutual Fund Services," in connection with making Investment Fund products eligible for processing at NSCC. Addendum V modified the standards of financial responsibility and operational capability set forth in Addenda B and I⁴ of NSCC's Rules to impose more stringent capital requirements on Mutual Fund/Insurance Services Members and Fund Members that process Investment Funds through NSCC's Mutual Fund Services. The more stringent financial standards were adopted because of NSCC's unfamiliarity with the product. Since its introduction, however, this service has been actively used and each day brings new requests by firms to become participants in order to take advantage of the services. NSCC has experienced no member defaults in the processing of Investment Funds through NSCC's Mutual Fund Services.

NSCC has determined that the current financial standards are an unnecessary barrier to entry. Based on NSCC's experience to date, the stringency of the financial criteria applicable to members doing transactions in Investment Funds is not commensurate with the associated risks.

Although NSCC is proposing to reduce the financial requirements imposed on all Mutual Fund/Insurance Services Member and Fund Member applicants and members seeking to process Investment Fund transactions at NSCC by deleting Addendum V, such applicants and members shall remain subject to the criteria set forth in Addenda B and I.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁵ and the rules and regulations thereunder applicable to NSCC because it will promote the prompt and accurate clearance and settlement of securities transactions by facilitating more direct access by NSCC members to NSCC Mutual Fund Services for Investment Funds.

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

NSCC believes that the proposed rule change will not impose a burden on

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

³ Securities Exchange Act Release No. 43606 (November 21, 2000), 65 FR 71182 (November 29, 2000) [File No. SR-NSCC-00-05].

⁴ Addendum B applies to Mutual Fund/Insurance Services Members processing mutual funds through NSCC's Mutual Fund Services, and Addendum I applies to Fund Members processing mutual funds through NSCC's Mutual Fund Services.

⁵ 15 U.S.C. 78q-1.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would remove a barrier to entry to and use of NSCC services for processing Investment Funds at NSCC thereby permitting additional entities to access and use NSCC directly for their processing of these products.

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

NSCC has not solicited nor received written comments directly relating to the proposed rule change. Banks and trust company members that process mutual fund transactions at NSCC have informed NSCC that the stringent capital requirements of Addendum V preclude them from processing their Investment Fund transactions directly at NSCC and cause them to incur increased processing costs. These entities have requested that NSCC review the appropriateness of these criteria. NSCC will notify the Commission of any other 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 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NSCC-2003-20. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 and on NSCC's Web site at <http://www.nsccl.com/legal/>.

All submissions should refer to File No. SR-NSCC-2003-20 and should be submitted by April 12, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49420; File No. SR-OCC-2003-08]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Related to Delivery Settlement of Exercised Stock Options and Matured Stock Futures

March 16, 2004.

I. Introduction

On August 22, 2003, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2003-08 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 February 13, 2004.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 49208 (February 9, 2004), 69 FR 7275.

II. Description

OCC is restructuring its rules applicable to delivery settlement of exercised stock options and matured stock futures.

The purpose of the proposed rule change is to:

(1) Restructure OCC's Rules applicable to physical settlement of exercised stock options and matured stock futures to reflect that such settlements are normally effected through the National Securities Clearing Corporation ("NSCC") (*i.e.*, the correspondent clearing corporation) with broker-to-broker ("BTB") settlement procedures as a backup;

(2) Require that BTB settlements be made on a delivery-versus-payment ("DVP") basis at The Depository Trust Company ("DTC") unless OCC directs otherwise;

(3) Revise OCC's Rules applicable to delivery settlement effected on a BTB basis in order to reflect the enhanced system capabilities to track such settlements offered by ENCORE Release 4.0, which was installed on September 26, 2003;³

(4) Revise OCC's Rules relating to buy-ins and sell-outs to parallel NSCC's Rules relating to buy-ins with respect to security balance orders; and

(5) Revise OCC's Rule relating to protect provisions so OCC rules parallel NSCC's Rules relating to protect provisions with respect to security balance orders.

OCC's By-Laws define an "underlying security" with respect to physically settled stock options and stock futures to mean the security or other asset that OCC is obligated to sell or to purchase upon exercise or maturity of the contract. Normally, underlying securities are delivered and paid for through the facilities of NSCC, but under certain circumstances settlement must be made on a BTB basis.⁴ If more than one underlying security is deliverable with respect to an exercised or matured contract, ENCORE Release 4.0 will treat the delivery of each underlying security as a separate settlement obligation. Payment of the aggregate purchase price for an underlying security will also be treated

³ ENCORE Release 4.0, which includes updated systems for settlement of physical delivery stock options and stock futures, is a major installation in OCC's multiyear project to rewrite its clearance and settlement system.

⁴ Such circumstances include cases when NSCC excludes an underlying security from its continuous net settlement system or when OCC suspends a clearing member with pending settlements that have not yet been guaranteed by NSCC.