

FICC will be secured by the clearing fund deposit of the repo broker.

In applying the hybrid processing to excess credits, the Operations Department in consultation with the Credit Risk Department will determine whether it is appropriate to pass through the excess credit to the repo broker. To the extent that GSD does not pass through to the broker all or a portion of its calculated excess credit, GSD will calculate an interest amount tied to the rate of interest earned by GSD on its overnight cash investment on such unpaid excess credit and will pay this interest amount to the repo broker on the subsequent business day. The proposed rule change will require some manual adjustments when the hybrid approach is used, but these instances will occur infrequently and will not rise to the complexity of the current process.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.⁹ FICC's look-through rule was established to eliminate the forward margin debits and credits of repo broker members of GSD when their dealer counterparties failed to timely submit trade data or submitted incorrect data. The transition to real time trade submission from end of day batch trade submission has significantly reduced the likelihood that repo brokers will be assessed forward margin and in FICC's view has rendered the look-through rule and its attendant manual adjustments unnecessary. Under the proposed rule change, forward margin will be collected from repo brokers or financed by GSD, but FICC will retain the right to look-through to the dealer counterparties when necessary. Accordingly, by significantly reducing the amount of manual processing with regard to forward margin debit obligations and credit entitlements without affecting FICC's ability to collect forward margin, the proposed rule change should help FICC to devote more resources to promoting the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change 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 applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-FICC-2003-06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50391; File No. SR-NASD-2004-090]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Nasdaq Closing Cross

September 15, 2004.

On June 9, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), 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 establish auxiliary procedures for administering the Nasdaq Closing Cross on certain significant trading days. On July 23, 2004, Nasdaq amended the proposed rule change.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on August 2, 2004.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The proposed rule change would establish auxiliary procedures for administering the Nasdaq Closing Cross on days when significant trading volume is expected ("significant trading days"). There are three components of the Nasdaq Closing Cross: (1) The

creation of Market On Close ("MOC"), Limit on Close ("LOC") and Imbalance Only ("IO") order types; (2) the dissemination of an order imbalance indicator; and (3) Closing Cross processing in the Nasdaq Market Center at 4 p.m. that executes the maximum number of shares at a single, representative price that is the Nasdaq Official Closing Price. On significant trading days, the proposed auxiliary procedures would permit Nasdaq: (i) To set earlier times for the end of the order entry periods for IO, MOC, and LOC orders set forth in NASD Rule 4709(a); (ii) to set an earlier time for the order modification and cancellation periods for IO, MOC, and LOC orders set forth in NASD Rule 4709(a); (iii) to set an earlier time for the dissemination times and frequencies for the order imbalance indicator set forth in NASD Rule 4709(b); and (iv) to adjust the threshold values set forth in NASD Rule 4709(c)(2)(D) to no greater than twenty percent.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁵ The Commission believes that the proposed rule change is consistent with section 15A(b) of the Act,⁶ in general, and furthers the objectives of section 15A(b)(6),⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed auxiliary procedures will allow Nasdaq greater flexibility in the administration of the Nasdaq Closing Cross and help Nasdaq maintain a fair and orderly market during the close on significant trading days.

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities

margin obligations in cases of a systemic outage where any non-submission by one counterparty versus a repo broker exceeds \$1 billion.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 22, 2004 ("Amendment No. 1"). In Amendment No. 1, Nasdaq restated the proposed rule change in its entirety.

⁴ See Securities Exchange Act Release No. 50087 (July 26, 2004), 69 FR 46195.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78o-3(b).

⁷ 15 U.S.C. 78o-3(b)(6).

association, and, in particular, section 15A(b) of the Act.⁸

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASD-2003-090), as amended by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50398; File No. SR-NSCC-2004-05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the By-Laws of the National Securities Clearing Corporation

September 16, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 7, 2004, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") 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 proposed rule change consists of changes to the By-Laws of the National Securities Clearing Corporation ("NSCC") to provide for indemnity for non-director members of NSCC board committees.

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

In order to help assure the fair representation of the users of NSCC, the NSCC board of directors has delegated significant responsibilities to the NSCC Equity Operations and Planning Committee, the NSCC Fixed Income Operations and Planning Committee, and the NSCC Membership and Risk Management Committee and has appointed to these committees, in addition to directors, non-director NSCC-user representatives.³

The purpose of the proposed rule change is to revise NSCC's By-Laws to specify that non-director members of NSCC board committees will be indemnified in the same manner as NSCC directors and officers.

NSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act⁴ and the rules and regulations thereunder applicable to NSCC because the proposed change strengthens NSCC's board committee structure and thereby helps NSCC provide its participants with fair representation in the administration of its affairs.

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

NSCC perceives no adverse impact on competition by reason of the proposed rule change.

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

Written comments from NSCC participants or others have not been solicited or received on the proposed rule change.

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

The foregoing rule change has become effective upon filing pursuant to section

19(b)(3)(A)(iii) of the Act⁵ and Rule 19b-4(f)(3)⁶ thereunder because the proposed rule is concerned solely with the administration of NSCC. At any time within 60 days of the filing of such 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-NSCC-2004-05 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-NSCC-2004-05. 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 NSCC and on NSCC's Web site at <http://www.nsccl.com/legal>. All

⁸ 15 U.S.C. 78o-3(b).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

³ The changes to the NSCC By-Laws are modeled on the current indemnification provisions contained in the By-Laws of both the Fixed Income Clearing Corporation and Emerging Markets Clearing Corporation. The Depository Trust Company has filed a proposed rule change similar to this proposed rule change. Securities Exchange Act Release No. 50399 (September 16, 2004) (File No. SR-DTC-2004-09).

⁴ 15 U.S.C. 78q-1.

⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ 17 CFR 240.19b-4(f)(3).