

existing NSCC rule. At any time within sixty 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. 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](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NSCC-2002-15. This file number should be included on the subject line if e-mail is used. To help us 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 Section, 450 Fifth Street, NW., Washington, DC 20549-0609. 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-2002-15 and should be submitted by June 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47874; File No. SR-NSCC-2003-08]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Rule 4, Section 12, Clearing Fund and Pledges of Deposits

May 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 6, 2003, 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 on the proposed rule change from interested persons.

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

The proposed rule change would modify NSCC's Rule 4, Section 12, to make clear NSCC's ability to pledge clearing fund deposits and NSCC's members' rights to pledged deposits.

#### 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.<sup>2</sup>

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

Each NSCC member pays or receives the net debit or net credit balance in its NSCC money settlement account at the end of each day. NSCC's principal risk is the possible failure of one or more members to settle their net debit obligations. To assure that it is able to complete its settlement obligations each

day, NSCC maintains liquidity resources, including a committed line of credit in the maximum amount of \$1.9 billion with a consortium of banks that is part of a combined syndicated facility with The Depository Trust Company ("End of Day Facility").

The End of Day Facility matures annually. As part of the negotiations to extend the facility for the year beginning May 27, 2003, NSCC's lenders have requested that Section 12 of NSCC's Rule 4, "Clearing Fund," be clarified. Section 12 currently provides that for the purpose of securing loans to NSCC, NSCC may pledge and repledge and grant its lenders a security interest in (i) cash deposits in the clearing fund, (ii) all securities, repurchase agreements, or deposits in which such cash is invested, and (iii) qualified bonds pledged by a member or letters of credit issued on a member's behalf for NSCC's benefit to secure the member's open account indebtedness to NSCC. This section provides that any such loan to NSCC may be on such terms as NSCC, in its discretion, may deem necessary or advisable and may be in amounts greater and extend for time periods longer than the obligations of any member in NSCC. Subject to the terms and conditions of such loan, NSCC remains obligated to its members to return any items of pledged collateral or permit substitutions and withdrawals thereof as provided in its rules.

It was always the intent and understanding of NSCC and its members that by virtue of Rule 4, Section 12, members had authorized NSCC to pledge to its lenders a member's actual deposits.<sup>3</sup> In order to accommodate NSCC's lenders, NSCC is proposing to modify the language of the rule itself to make clear NSCC's right to pledge its members' actual deposits to one or more lenders for the purposes enumerated in the rule. In addition, NSCC is also proposing to add language to the rule to make clear what is implicit in the current rule that while there remain any outstanding obligations under any such loan, no member may assert a claim against the lender for the return of any collateral pledged by NSCC as security therefore.<sup>4</sup> Subject to the foregoing and

<sup>3</sup> Securities Exchange Act Release No. 28784 (January 16, 1991), 56 FR 2575 (January 23, 1991) [File No. SR-NSCC-90-22].

<sup>4</sup> The proposed language would state, "No Member, Insurance Carrier Member or Fund Member shall have any right, claim or action against any secured Lender (or any collateral agent of such secured Lender) for the return, or otherwise in respect, of any such collateral Pledged by the Corporation to such secured Lender (or its collateral agent), so long as any loans made by such Lender

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified parts of these statements.

<sup>7</sup> 17 CFR 200.30-3(a)(12).