

provisions of Section 15A of the Act,¹⁸ in general, and Section 15A(b)(5) of the Act,¹⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed rule change will result in a significant reduction in the fees paid by all ACT participants.

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

Nasdaq 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

Written comments were neither solicited nor received.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act²⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder,²¹ because it establishes or changes a due, fee, or other charge imposed by Nasdaq. At any time within 60 days after the filing of the proposed 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. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on June 19, 2003, when Amendment No. 3 was filed.²²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Copies of the submission, all subsequent amendments, all written

statements with respect to the proposed rule change, as amended, 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 such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-2003-71 and should be submitted by August 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48131; File No. SR-NSCC-2003-08]

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

July 3, 2003.

I. Introduction

On May 6, 2003, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-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 May 21, 2003.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

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 (maximum amount of \$1.9 billion) with a consortium of banks. This committed line of credit is part of a combined syndicated facility with The Depository Trust Company ("DTC").

The line of credit matures annually. As part of the negotiations to extend the facility for the year beginning May 27, 2003, the lenders requested that Section 12 of NSCC's Rule 4, "Clearing Fund," be clarified.³ 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. That section also 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.⁴ In order to accommodate NSCC's lenders, NSCC is modifying the language of Rule 4, Section 12, 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 adding 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.⁵

³ The lenders made a similar request of DTC which also resulted in the filing of a proposed rule change by DTC. Securities Exchange Act Release No. 47875 (May 15, 2003), 68 FR 27877 (May 21, 2003) [File No. DTC-2003-08].

⁴ Securities Exchange Act Release No. 28784 (January 16, 1991), 56 FR 2575 (January 23, 1991) [File No. SR-NSCC-90-22].

⁵ The new language states, "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

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¹⁸ 15 U.S.C. 78o-3.

¹⁹ 15 U.S.C. 78o-3(5).

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19b-4(f)(2).

²² See n. 5, *supra*.

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 47874 (May 15, 2003), 68 FR 27881.