

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

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Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48290; File No. SR-NSCC-2003-17]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Imposition of Fines

August 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 2, 2003, 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 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 modify NSCC Rule 16 and Addendum P to impose fines upon

members and non-clearing members utilizing NSCC's Commission Settlement service when they fail to timely pay all or part of their monthly commission settlement obligations to NSCC.

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

The purpose of the proposed rule change is to modify NSCC's rules to provide that fines may be imposed upon members and non-clearing members utilizing NSCC's Commission Settlement service when they fail to timely pay all or part of their monthly commission settlement obligations to NSCC.

Under NSCC Rule 16 (Settlement of Commissions), NSCC provides a service where all payments of commissions due on business where a principal is given up between NSCC members and non-clearing members may be settled on a monthly basis. Rule 16 provides that if

a member or non-clearing member is indebted to NSCC, it shall pay³ the amount due to NSCC on or before the commission bill settlement date of each month, generally the 15th, as determined by NSCC. NSCC relies upon the timely receipt of the funds from such members and non-clearing members in order to pay others who are owed funds as a result of using the Commission Settlement service.

NSCC Rule 48 (Disciplinary Proceedings) allows NSCC to impose fines upon participants for any error, delay, or other conduct that is determined to be detrimental to NSCC's operations. Historically, NSCC has imposed fines upon participants for failure to timely settle end of day settlement balances, late settlement acknowledgement, and for late payment of clearing fund deposits. In 2002, NSCC commenced fining participants for failure to timely provide requested financial and operational information and for failure to timely notify NSCC on an ongoing basis of certain internal conditions which may cause NSCC to reevaluate the participants continued participation.⁴ NSCC now intends to commence fining members and non-clearing members for failing to timely meet their obligations to NSCC arising out of their use of the Commission Settlement service.

The proposed rule change also amends NSCC Addendum P (Fine Schedule) to reflect the addition of the fines. The proposed fine schedule in NSCC Addendum P, Section 5, Settlement of Commissions, pursuant to NSCC Rule 16,⁵ is as follows:

Net debit	First occasion	Second occasion	Third occasion	Fourth occasion (or greater)
\$0-100,000	(1)	\$100	\$200	\$300
\$100,000-200,000	(1)	200	300	400
Greater than \$200,000	(1)	300	400	500

Notes: (1) First occasions result in a warning letter to the Member/Non-clearing member.

(2) In addition to the fine, unpaid amounts will incur interest charges until paid.

In addition, Rule 16 has been modified to clearly state that failure to timely pay all or part of a monthly Commission Settlement balance may

result in the imposition of a fine and may subject the member or non-clearing member to action by NSCC pursuant to Rule 46 (Restriction on Access to Services) or Rule 48 (Disciplinary Proceedings). Participants will continue to have the ability to contest fines as currently provided for within NSCC's rules and procedures.⁶

The proposed rule change is consistent with Section 17A(b)(3)(G) of the Act⁷ and the rules and regulations thereunder because it will allow NSCC to impose fines upon late paying users of the Commission Settlement service thereby further ensuring that NSCC has the ability to appropriately discipline for violations of its rules.

¹¹ 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 Members and non-clearing members may make payment via ACH wire transfer, Fed Funds wire transfer, or by check made payable to NSCC.

⁴ Securities Exchange Act Release No. 46903 (November 25, 2002), 67 FR 72012 (December 3, 2002) (order approving NSCC's rule change to fine members who fail to timely provide requested financial or operating information or who fail to provide other changes to NSCC).

⁵ Fines to be levied for offenses within a moving twelve-month period beginning with the first occasion.

⁶ See, e.g., NSCC Rule 37 (Hearing Procedures).

⁷ 15 U.S.C. 77(q-1)(b)(3)(G).