

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-95-13 and should be submitted by September 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>  
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[Release No. 34-36088; File No. SR-NASD-95-20]

#### Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Failure to Honor Settlement Agreements Obtained in Connection With an Arbitration or Mediation

August 10, 1995.

On June 9, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> a proposed rule relating to the failure to honor settlement agreements

obtained in connection with an arbitration or mediation.<sup>2</sup> The Commission published notice of the proposed rule change in the **Federal Register** on June 20, 1995.<sup>3</sup> The Commission received one comment in response to the notice.<sup>4</sup> The Commission has reviewed the comment received, and for the reasons discussed below, approves the proposed rule change.

#### I. Description

The amendments to the Resolution of the Board of Governors—Failure to Act Under Provisions of Code of Arbitration Procedure ("Resolution") makes clear that the following acts constitute a violation of Article III, Section 1 of the Rules of Fair Practice: (a) a failure to honor a written and executed settlement agreement obtained in connection with an arbitration conducted under the auspices of a Self-Regulatory Organization ("SRO"); and (b) a failure to honor a written and executed settlement agreement obtained in connection with a mediation conducted under the auspices of the NASD. The rule change also amends Article VI, Section 3 of the NASD By-Laws to permit the NASD to suspend or cancel the membership or registration of a member or associated person for failing to honor a written and executed settlement agreement obtained in connection with an arbitration or mediation conducted under the auspices of the NASD.

#### II. Discussion

The Commission agrees with the NASD's judgment that the failure by a member or associated person to honor a settlement agreement entered into in connection with an arbitration proceeding or a NASD mediation should have the same consequences as the failure to pay an arbitration award.<sup>5</sup> The

<sup>2</sup> The NASD originally submitted the proposed rule change on May 10, 1995. The NASD subsequently submitted two minor technical amendments, and one amendment reporting the final count of votes cast by members in favor of the rule change. The text of these amendments may be examined in the Commission's Public Reference Room. See Letters from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Division of Market Regulation, SEC (May 16, 1995 and June 9, 1995). This notice reflects those amendments; and Letter from Frank J. Formica, NASD, to Mark P. Barracca, Branch Chief, Division of Market Regulations, SEC (July 13, 1995).

<sup>3</sup> Securities Exchange Act Release No. 35847 (June 14, 1995), 60 FR 32190.

<sup>4</sup> Letter from Paul J. Dubow, Chairman, Arbitration Subcommittee of the Litigation Section, Securities Industry Association ("SIA") to Secretary, SEC (July 11, 1995).

<sup>5</sup> The Resolution, adopted in 1973, states that "it may be deemed \* \* \* a violation of Article III,

Commission is concerned that a failure by a NASD member or associated person to honor a settlement agreement imposes substantial added costs on the prevailing party or parties in the form of delayed recoveries, actions to enforce agreements where parties fail to honor settlement agreements and additional fees connected with short-notice cancellation of hearing. The NASD reports that its Arbitration Department also incurs additional costs in rescheduling hearings, and on occasion has had to appoint new arbitrators to hear a matter. In addition, the credibility of the arbitration process will suffer if NASD members and their associated persons delay the resolution of a dispute by failing to honor a settlement agreement.

This rule change amends the Resolution to clarify that the failure by a member or associated person to honor a written and executed settlement agreement is actionable as a violation of Article III, Section 1 of the Rules of Fair Practice. The amendment is limited to settlement agreements that have been reduced to writing and have been executed. The amendment, therefore, will not encompass unexecuted settlements.

In its comments,<sup>6</sup> the SIA argues against adoption of the rule because: (1) The NASD has not established a problem exists with respect to failing to honor settlement agreements that warrants a rule change; (2) it is not balanced or even-handed in that there are no provisions in the rule that could be used to sanction non-members who fail to honor a written settlement agreement; and (3) it proposes to impose sanctions for failure to honor settlement agreements in connection with arbitrations held at other forums. The Commission finds the SIA's arguments unpersuasive.

With respect to the SIA's first comment, the NASD, in its response to the SIA, points out that while the problem of failure to honor a settlement agreement may not be a pervasive problem, it is nonetheless a problem that needs to be addressed.<sup>7</sup> This rule addresses the problem before it becomes more serious.

The SIA's second comment describes the rule as not balanced because it fails

Section 1 of the Rules of Fair Practice for a member or person associated with a member to \* \* \* fail to honor an [arbitration] \* \* \*." This Resolution applies to awards rendered in NASD sponsored arbitration, as well as arbitration sponsored by the American Arbitration Association ("AAA") and other SROs.

<sup>6</sup> See note 4, *supra*.

<sup>7</sup> Letter from Elliott R. Curzon, Assistant General Counsel, NASD, to Mark P. Barracca, Branch Chief, SEC (July 19, 1995) (NASD "response").

<sup>5</sup> 17 CFR 200.30-3(a)(12) (1994).

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

to provide for sanctions against non-members who fail to honor settlement agreements. This argument fails to take the NASD's jurisdictional limitations into account. The NASD is not in a position to pass rules governing non-members. Additionally, NASD members and associated persons have an obligation to "observe high standards of commercial honor" under Article III, Section 1 of the NASD's Rules of Fair Practice, and honoring settlement agreements is a component of commercial honor. Furthermore, NASD members and associated persons are afforded procedural protection under NASD rules during the adjudication of these matters.

With respect to the SIA's final comment, the Commission notes that the rule change does not provide for the use of the NASD's suspension or revocation proceedings where the settlement is not obtained in connection with NASD arbitration. As indicated in the NASD's response, where a party to an arbitration conducted in another forum complains to the NASD that a member or an associated person failed to honor a settlement agreement, the complaint would be investigated in the same manner as any other customer complaint pursuant to the NASD's disciplinary process. The NASD reports that such an investigation would include obtaining copies of the records of the arbitration proceeding from the other forum and determining if there are any facts that would demonstrate that disciplinary action is warranted. If a member or associated person is deemed to have violated a settlement agreement, a formal complaint will be issued and the member or associated person will be entitled to a hearing before a panel of a District Business Conduct Committee and be afforded a right to appeal any adverse decision to the National Business Conduct Committee, the SEC and the courts. See NASD Code of Procedure. In short, the rule will provide for greater investor protection without reducing any procedural rights NASD members and associated persons have under the rules.

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act.<sup>8</sup> Requiring members or associated persons of a member to abide by settlement agreements entered into in compromise of a dispute pending in arbitration or mediation will enhance the effectiveness of arbitration and mediation as alternative dispute resolution methods and eliminate the unfair impact and waste of resources

experienced by the public, other litigants and the arbitration/mediation forum that result from the failure to honor a settlement agreement.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-95-20 be, and hereby is, approved. The effective date of this rule change will be announced by the NASD in a Notice to Members to be published no more than 45 days after SEC approval, provided, however, that the effective date will be no more than 60 days following publication of the Notice to Members announcing SEC approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-20403 Filed 8-16-95; 8:45 am]

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[Release No. 34-36091; File No. SR-NSCC-95-06]

**Self-Regulatory Organizations;  
National Securities Clearing  
Corporation; Order Approving a  
Proposed Rule Change Establishing  
the Collateral Management Service**

August 10, 1995.

On May 22, 1995, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSCC-95-06) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On June 2, 1995, NSCC filed an amendment to the proposed rule change to clarify which entities may be permitted to participate in the proposed service.<sup>2</sup> Notice of the proposal was published in the **Federal Register** on June 12, 1995.<sup>3</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

**I. Description of the Proposal**

The purpose of the proposed rule change is to establish the Collateral Management Service ("CMS") which will provide access to information regarding participants' clearing fund, margin, and other similar requirements and deposits, including excess or deficit amounts and comprehensive data on

underlying collateral, ("CMS data") at NSCC and other participating clearing entities. Participating clearing entities will include clearing agencies registered pursuant to Section 17A of the Act<sup>4</sup> and clearing organizations affiliated with or designated by contract markets trading specific futures products under the oversight of the Commodity Futures Trading Commission.

Participating clearing entities will be required to sign and execute NSCC's CMS agreement. The CMS agreement sets forth NSCC's authorization from participating clearing entities to collect and provide information relating to participant's clearing fund and margin requirements, and participants' clearing fund and margin deposits as contained in the Securities Clearing Group's ("SCG")<sup>5</sup> data base and in the Chicago Board of Trade Clearing Corporation's Pay Collect System ("BOTCC System")<sup>6</sup> and additional information provided by the participating clearing entities. The CMS agreement also addresses such matters as the confidentiality of CMS Data, additional parties, costs, and limitation of liability.

NSCC will provide CMS data to participating NSCC participants,<sup>7</sup> to participating clearing entities, and if a participating clearing entity requests to participants of such participating clearing entity. Each participant that desires access to the CMS data will be required to complete a CMS participation application form. A participant's access to CMS data will be limited to the participant's own information. Similarly, a participating clearing entity's access to CMS data will be limited to only the CMS data of participants of such entity. A participant may request that NSCC exclude data relating to such participant

<sup>4</sup> 15 U.S.C. 78q-1 (1988).

<sup>5</sup> The SCG was established in 1989 as a result of developments surrounding the October Market Break and subsequent studies on the causes of the Market Break. The stated purpose of the SCG is to increase cooperation and coordination among securities clearing entities and to facilitate the sharing of certain clearance and settlement information regarding surveillance and member risk monitoring. For a further description of the SCG, refer to Securities Exchange Act Release No. 27044 (July 25, 1989), 54 FR 30963 [File Nos. SR-DTC-88-20, SR-MCC-88-10, SR-MSTC-88-07, SR-NSCC-88-09, SR-OCC-89-02, SR-Philadep-89-01, and SR-SCCP-89-01] (order approving the establishment of the SCG).

<sup>6</sup> The Chicago Board of Trade through BOTCC established the Shared Pay Collect System which disseminates the daily pay/collects of all futures clearing firms which are affiliated with participating futures exchanges.

<sup>7</sup> NSCC Rule 49 currently authorizes NSCC to release clearing data relating to participants' clearance and settlement activity at NSCC.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> Letter from Anthony H. Davidson, Associate Counsel, NSCC, to Peter Geraghty, Division of Market Regulation, Commission (May 26, 1995).

<sup>3</sup> Securities Exchange Act Release No. 35567 (June 5, 1995), 60 FR 30912.

<sup>8</sup> 15 U.S.C. 78o-3.