

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.*

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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.

from the CMS by completing a request to exclude data form.

At this time, The Depository Trust Company ("DTC"), the MBS Clearing Corporation, the Stock Clearing Corporation of Philadelphia ("SCCP"), the Philadelphia Depository Trust Company ("Philadep") and the Participants Trust Company have signed CMS agreements. The Options Clearing Corporation has agreed in principle to participate in the CMS.

## II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.<sup>8</sup> As discussed below, the Commission believes that the proposed rule change is consistent with NSCC's obligation under the Act because the CMS should help clearing agencies and their participants to better monitor clearing fund, margin, and other similar required deposits that protect a clearing agency against loss should a member default on its obligations to the clearing agency. Consequently, the CMS should assist clearing agencies in assuring the safeguarding of securities and funds in their custody or control.

Many clearing participants currently maintain memberships at multiple clearing entities. The type of clearing entities at which a single firm may maintain memberships can vary a great deal and can include securities clearing corporations and depositories regulated by the Commission and futures clearing entities that are not regulated by the Commission. Whether a securities or futures clearing entity, all such clearing entities require that members post deposit in some form of a participants fund contribution and/or margin requirement to protect the clearing entity from losses should the member default on its obligations to the clearing entity. Consequently, clearing participants generally maintain required deposits at several different clearing entities. The CMS is intended to help clearing participants to more efficiently manage their various clearing fund and/or margin deposits by providing access to such information, including comprehensive data on underlying collateral at such multiple clearing entities, in a consolidated manner through a computer network.

The CMS also will provide participating clearing entities with the ability to view common members' clearing fund and/or margin deposits at

other participating clearing entities. This will be especially beneficial to those participating clearing entities that have executed cross-guaranty agreements<sup>9</sup> or have other cross-guarantee arrangements.<sup>10</sup> The Commission supports the use of cross-guaranty agreements and other similar arrangements among clearing agencies as a method of reducing clearing agencies' risk of loss due to a common participant's default.

Participants' access to CMS information will be limited to a participant's own information, and participants will not have the ability to submit data directly to NSCC. All CMS data will be submitted by participating clearing entities. Consequently, the Commission is satisfied that the confidentiality and accuracy of participant data will be maintained.

The Commission also believes that the proposed rule change is consistent with Section 17A(a)(2)(A)(ii) of the Act which directs the Commission to facilitate linked or coordinated facilities for clearance and settlement of transactions in equities, options, and futures.<sup>11</sup> Furthermore, the Commission believes that the proposed rule change is consistent with the Division of Market Regulation's conclusion in its 1987 Market Break Report that information coordination among clearing entities should include commodity futures clearing corporations and other appropriate futures entities to assure complete coordination and dissemination of information on

<sup>9</sup> Currently, DTC and NSCC are the only clearing agencies registered with the Commission that have executed a cross-guaranty agreement. The agreement provides that in the event of a default of a common member, any resources remaining after the failed common member's obligations to the guaranteeing clearing agency have been satisfied will be made available to the other clearing agency. The guaranty is not absolute but rather is limited to the extent of the resources relative to the failed member remaining at the guaranteeing clearing agency. The principal resources will be settlement net credit balances and the failed member's deposits to the clearing agencies' clearing funds. For a complete description of DTC's and NSCC's agreement, refer to Securities Exchange Act Release No. 33548 (January 31, 1994), 59 FR 5638 [File Nos. SR-DTC-93-08 and SR-NSCC-93-07] (order approving proposed rule change).

<sup>10</sup> Pursuant to Section 3, Rule 2, Article VI of the Midwest Securities Trust Company's ("MSTC") Rules, a defaulting participant's obligations at MSTC or the Midwest Clearing Corporation will be discharged by application of that participant's deposits at either clearing agency if that participant is a common member to both clearing agencies. Similarly, pursuant to Section 4, Rule 4 of SCCC's Rules, SCCC will make available any portion of a defaulting participant's contribution to its participants fund to offset a loss suffering by Philadep by reason of that participant's default. Philadep's Rules contain an identical provision.

<sup>11</sup> 15 U.S.C. 78q-1(a)(2)(A)(ii) (1988).

common members.<sup>12</sup> NSCC's CMS will provide access in a consolidated manner to information regarding clearing fund, margin, and other similar requirements and deposits at both securities and futures clearing entities. Coordination of information among clearing entities concerning common members is a critical element in clearing entities' ability to protect and safeguard funds and securities.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-95-06) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-36094; File No. SR-NSCC-10]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Concerning the Processing of Index Receipts

August 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 27, 1995, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-95-10) 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 purpose of the proposed rule change is to modify NSCC's procedures for processing index receipts to reflect that the only service NSCC will provide

<sup>12</sup> Division of Market Regulation, The October 1987 Market Break 10-21 (February 1988).

<sup>13</sup> 17 CFR 200.30-3(a)(12) (1994).

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

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).