

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 Article V of MBSCC's Rules by adding a new Rule 14 concerning the release of data relating to participants' clearance and settlement activity. MBSCC receives transaction data and other data relating to its participants in the normal course of its business. The rule change sets forth MBSCC's obligation to preserve its participants' rights with respect to such data and the conditions under which MBSCC will disclose such data.

The proposed rule will permit MBSCC to disclose such data to regulatory organizations, self-regulatory organizations, clearing organizations affiliated with or designated by contract markets trading specific futures products under the oversight of the Commodity Futures Trading Commission, and others under certain conditions. The proposed rule change provides that generally, the release of a participant's clearing data shall be conditioned upon that participant's submission of a written request.⁴ The proposed rule also defines "clearing data" to mean transactions and other data which is received by MBSCC in the clearance and/or settlement process or such reports or summaries which may be produced as a result of processing such data.

The proposed rule change also will facilitate MBSCC's participation in the National Securities Clearing Corporation's ("NSCC") Collateral Management Service ("CMS").⁵ The proposed rule change will enable MBSCC to provide information regarding MBSCC's Participants Fund, including excess or deficit amounts, and comprehensive data on underlying collateral to NSCC for inclusion in the CMS. Participants of MBSCC that desire access to the CMS data will be required to submit a CMS participation application to NSCC. The execution of a CMS application will constitute the written request required under the proposed rule change to authorize

⁴ As a self-regulatory organization, MBSCC currently is permitted without obtaining a participant's written authorization to cooperate and share data with other regulatory or self-regulatory organizations for regulatory purposes.

⁵ Generally, the CMS will provide participating participants and clearing agencies with access to information regarding clearing fund, margin, and other similar requirements and deposits. For a complete description of the CMS, refer to Securities Exchange Act Release No. 35809 (June 5, 1995), 60 FR 30912 [File No. SR-NSCC-95-06] (notice of filing of proposed rule change).

MBSCC to release a participant's clearing data to the participant.⁶ MBSCC believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the rule proposal should help to safeguard securities and funds in its custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission on any written comments received by MBSCC.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC consents, the Commission will:

- (a) By order approve such proposed rule change or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 NW., Washington, DC 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

⁶ The CMS agreement sets forth MBSCC's and NSCC's authorizations to collect and provide information relating to the participants' clearing fund and margin requirements and the participants' clearing fund and margin deposits.

available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to the file number SR-MBSCC-95-05 and should be submitted by September 14, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36112; File No. SR-NSCC-95-11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Concerning Book-Entry Money Settlements With Members

August 17, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 8, 1995, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-95-11) 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 from interested persons.

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

NSCC is asking for renewal of its temporary authority to allow intrabank funds transfers between NSCC and its members in satisfaction of settlement obligations.

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

⁷ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

summaries, set forth in sections A, B, and C below of such statements.²

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

On October 5, 1990, NSCC filed a proposed rule change with the Commission that was noticed in the **Federal Register**³ and was subsequently amended three times.⁴ On September 4, 1992, the proposal as amended was approved on a temporary basis through August 31, 1993.⁵ The temporary approval subsequently was extended through August 31, 1995.⁶ The current filing requests an extension of the temporary approval order until such time as NSCC implements its same-day funds settlement system.

As discussed in detail in the approval order of September 4, 1992, the rule change permits NSCC members to satisfy their settlement obligations to NSCC and permits NSCC to satisfy its settlement obligations to its members by means of electronic intrabank funds transfers between members' accounts and NSCC's accounts at various settlement banks. Under the proposal, two types of intrabank funds transfers are available: (1) Electronic transfers whereby on settlement day NSCC pays members by check for next-day value and members pay NSCC by NSCC directing the settlement banks to make irrevocable transfers from the members' accounts to NSCC's accounts for next-day availability or whereby members pay NSCC by check and NSCC effects payments by electronic transfers ("one-way electronic transfers") and (2) electronic transfers whereby on settlement day both NSCC and members pay by NSCC directing the settlement banks to make irrevocable transfers for next-day value without any netting ("two-way electronic transfers").

² The Commission has altered some of these statements.

³ Securities Exchange Act Release No. 28715 (December 12, 1990), 55 FR 715 [File No. SR-NSCC-90-21].

⁴ Letters from: (1) Jeffrey F. Ingber, Associate General Counsel, NSCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation ("Division"), Commission (August 14, 1991); (2) Peter J. Axilrod, Associate General Council NSCC, to Jerry Carpenter, Branch Chief, Division, Commission (March 23, 1992); and (3) Peter J. Axilrod, Associate General Counsel, NSCC, to Thomas C. Etter, Jr., Attorney, Division, Commission (July 22, 1992).

⁵ Securities Exchange Act Release No. 31157 (September 4, 1992), 57 FR 42602 [File No. SR-NSCC-90-21].

⁶ Securities Exchange Act Release No. 32836 (September 2, 1993), 58 FR 47483 [File No. SR-NSCC-93-08]; Securities Exchange Act Release No. 34573 (August 22, 1994), 49 FR 44443 [File No. SR-NSCC-94-17].

As a prerequisite to either NSCC or any of its members making a settlement payment by an electronic funds transfer, the proposed rule change imposes three requirements. First, any such payment must be effected on a next-day funds availability basis.⁷ Second, any such payment must be in conformity with an agreement, which must be executed by NSCC and any bank that acts as a payment intermediary, which stipulates that any such funds transfer must be effected on an irrevocable and final basis.⁸ Third, any bank that acts as an intermediary for such funds transfers must meet NSCC's standards for letter of credit issuers.⁹

NSCC believes that a renewal of the approval of the rule change would be consistent with the Act and particularly with Section 17A thereof.¹⁰ Section 17A(a)(1) of the Act encourages the use of efficient, effective, and safe procedures for securities clearance and settlement. Moreover, section 17A(b)(3)(F) of the Act requires that the rules of clearing agencies be designed to assure the safeguarding of funds in the custody or control of clearing agencies or for which they are responsible.

NSCC believes that substantial marketplace efficiencies can be achieved by authorizing NSCC to effect electronic intrabank funds transfers to satisfy settlement obligations between itself and its members. NSCC also believes that the exchange of checks is labor intensive and that physical movement of checks can involve loss or delay. NSCC therefore believes that intrabank funds transfers should enhance the safeguarding of funds and that earlier finality of settlement provides certainty to the marketplace

⁷ The term "next-day funds" refers to funds paid today that will be available tomorrow. By contrast, "same-day funds" refers to funds that are immediately available.

⁸ The September 4, 1992, order noted that on March 24, 1992, NSCC filed with the Commission a letter representing that NSCC will: (1) Submit for Division approval the current form of any agreement pursuant to which intrabank funds transfers are to be made and (2) notify the Division of the identity of each bank that enters into any such contract. Letter from Peter J. Axilrod, Associate General Counsel, NSCC, to Jerry Carpenter, Branch Chief, Division, Commission (March 23, 1992).

⁹ For a bank or trust company to be approved by NSCC to issue letters of credit on behalf of members for purposes of clearing fund requirements, the bank or trust company must meet specific standards in terms of: (1) Minimum levels of stockholders' equity and (2) certain credit ratings for its short term obligations as determined by Standard and Poor's Corporation or Moody's Investor Service, Inc. NSCC Rule 4, Section 1; Securities Exchange Act Release No. 29444 (July 16, 1991), 56 FR 34081 [File No. SR-NSCC-91-03] (order approving NSCC's revised standards for approved issuers of letters of credit for clearing fund purposes).

¹⁰ 15 U.S.C. 78q-1 (1988).

and serves to increase investor confidence in the markets.

The Commission temporarily approved the proposed rule change to permit NSCC and other interested parties to assess prior to permanent Commission approval the effects intrabank funds transfers have on money settlement payments at NSCC. Because the assessment process is not complete, the facts and circumstances justifying temporary approval of the rule change have not changed significantly from the date of original temporary approval. NSCC also expects to implement a same-day funds settlement system and to file a proposed rule change with the Commission in connection therewith. Therefore, NSCC is requesting that temporary approval be extended until such time as NSCC implements its same-day funds settlement system.

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

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which self-regulatory organizations consent, the Commission will:

- (A) By order approve such proposed rule change or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 NW., Washington, DC 20549. Copies of the submissions, 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 5th Street NW., Washington, DC 20549. 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-95-11 and should be submitted by September 14, 1995.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36115; File No. SR-NASD-95-33]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Actions Taken During Extraordinary Market Conditions

August 17, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 21, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below; Items I and II have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed below, the Commission has also granted accelerated approval to a portion of the proposal.

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

The NASD seeks the authority to modify temporarily the operation of its SelectNet service and its Small Order

Execution System ("SOES") during periods of unusually high Nasdaq broadcast volume. Specifically, the NASD proposes that, during periods with a high number of quotation updates, SelectNet broadcast orders and/or trade reports, it be permitted to take the following action without having to file a proposed rule change with the Commission:

(a) Suspend the entry of SelectNet broadcast orders from 9:30 to 10:30 a.m.;

(b) Execute immediately matched or crossed customer limit orders in the SOES limit order file (*i.e.*, rather than delay execution for five minutes); and

(c) Increase from five minutes to ten minutes the standard grace period in which market makers must refresh their SOES minimum exposure limit.

The NASD requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD 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. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

1. Purpose

Pursuant to article VII, section 3 of the NASD By-Laws, a special committee of the NASD Board of Governors was convened on July 20, 1995 to authorize action regarding the operation of certain Nasdaq automated systems. Article VII, section 3 permits a committee consisting of the Chairman, an Executive Committee member and the President of the NASD, in lieu of full Board consideration, to take immediate action when extraordinary market conditions exist.³ Extraordinary market

conditions are such conditions where the market is experiencing highly volatile trading conditions that require prompt intervention to permit continued efficient operation of the market. Until the new network⁴ is completely implemented later this year, and as long as Nasdaq continues to experience trading activity exceeding the existing network's stated capacity of 450 million shares per day, the NASD believes Nasdaq must be considered to be experiencing extraordinary market conditions that must be immediately addressed by appropriate steps that will permit the continued efficient operation of the market.⁵

Therefore, until the new network is fully implemented, the special committee of the NASD Board authorized the following actions to be taken to permit its network to operate efficiently during such periods as the Nasdaq market is experiencing, or reasonably anticipates, heavy trading activity in excess of 450 million shares per day:

1. Between the hours of 9:30 to 10:30 a.m., SelectNet orders must be directed to specific market makers;

2. The standard grace period for a market maker in a National Market security to restore its minimum exposure limit in SOES will be expanded from five minutes to ten minutes; and

3. Priced orders entered into the SOES limit order file on the opposite side of the market from each other that match or cross in price will be executed against each other immediately rather than after five minutes.⁶

The NASD seeks to be able to implement these changes under the described conditions without having to submit a proposed rule change with the Commission each time it implements one of these changes. Under the NASD's emergency authority, the NASD is required, among other things, to file a proposed rule change under section 19(b)(3)(A) promptly after exercising this authority.⁷ Under section

participation in any such system of any or all persons or the trading therein of any or all securities. See NASD Securities Dealers Manual ¶1182A.

⁴ That is, the migration from Nasdaq Workstation I to Nasdaq Workstation II.

⁵ For example, on Wednesday, July 19, 1995, the NASD experienced its highest trading volume ever, 597.5 million shares. In addition, quotation updates were up to four times higher than the previous peak update traffic.

⁶ The NASD notes that the Committee also authorized and approved the actions and regulatory changes described above for the extraordinary market conditions experienced on July 19-21, 1995.

⁷ Securities Exchange Act Release No. 26072 (Sept. 12, 1988), 53 FR 36143 (Sept. 16, 1988) (order

Continued

¹¹ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ In the event of an emergency or extraordinary market conditions, Article VII, Section 3 permits the NASD to take any action regarding the trading in or operation of the over-the-counter securities market, the operation of any automated system owned or operated by the NASD, and the