

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 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 number in the caption above and should be submitted by April 3, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-36931; File No. SR-NSCC-96-05]

**Self Regulatory Organizations;  
National Securities Clearing  
Corporation; Notice of Filing of  
Proposed Rule Change Modifying the  
Automated Customer Account  
Transfer Service to Facilitate the  
Transfer of Shares Being Tracked in  
the Initial Public Offering Tracking  
System**

March 6, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 27, 1996, the 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 persons.

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

NSCC proposes to modify its rules and procedures relating to its Automated Customer Account Transfer Service ("ACATS") to facilitate the transfer of shares which are purchased in an initial public offering ("IPO shares") and which are being tracked in

The Depository Trust Company's ("DTC") IPO tracking system.<sup>2</sup>

**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 such statements.<sup>3</sup>

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

The proposed rule change will notify NSCC's Rule 50 (ACATS) so that Rule 50 states that shares to be transferred through ACATS that are being tracked through DTC's IPO tracking system will not be entered into NSCC's Continuous Net Settlement ("CNS") accounting operation even if such shares are CNS eligible.<sup>4</sup> Rule 50 also will state that NSCC will prepare ACATS receive and deliver orders for such shares.

Under DTC's proposed IPO tracking system, broker-dealers will have an IPO control account at DTC for IPO shares and a free account for shares purchased in the secondary market. The segregated accounts aid in tracking the movement of IPO shares.

In the CNS system, deliver obligations must be made from the free account. If IPO shares for which there is an ACATS deliver obligation were to settle in CNS, the shares would have to be moved out of the segregated IPO control account and into the member's free account. The IPO tracking system would register the movement from the IPO control account into the free account as a flip<sup>5</sup> and

<sup>2</sup>This filing is made in conjunction with DTC's proposed rule change seeking to implement the IPO tracking system. The IPO tracking system will allow lead managers and syndicate members of equity underwritings to monitor flipping of new issues in an automated bookentry environment. For a complete description of the IPO tracking system, refer to Securities Exchange Act Releaser No. 36897 (February 27, 1996), [SR-DTC-95-27] (notice of filing of proposed rule change seeking to implement the IPO tracking system).

<sup>3</sup>The Commission has modified the text of these statements.

<sup>4</sup>CNS eligible securities are those securities that are eligible for transfer on the books of a securities depository registered with the Commission under Section 17A of the Act and that are contained in a list maintained by NSCC as subject to clearance and settlement in its CNS system.

<sup>5</sup>Flipping occurs during an IPO when a syndicate's lead manager is supporting the IPO with

would no longer be able to track the shares.

NSCC's proposed rule change will require IPO shares transferred through ACATS to be delivered ex-CNS (*i.e.*, outside of the CNS system). The shares will be delivered pursuant to DTS's new IPO customer account transfer function. The shares will continue to be tracked and will not register as flipped even though they are subject to an ACATS deliver obligation.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>6</sup> because the change will facilitate efficiency and safety in the clearance and settlement of securities transactions. Furthermore, NSCC believes the proposed rule change will permit DTC's IPO tracking system to achieve its maximum potential and expects to implement these changes concurrently with the implementation of DTC's IPO tracking 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 relating to the proposed rule change 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 the self-regulatory organization 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.

a stabilization bid, which is intended to keep the price of the issue from dropping below its initial offering price, and securities that had been distributed to investors are resold by those investors back to the syndicate.

<sup>6</sup>15 U.S.C. 78q-1 (1988)

<sup>3</sup>17 CFR 200.30-3(a)(12) (1995).

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

#### 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 with held from the public in accordance with provisions of 5 U.S.C. 552, will be 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 NSCC. All submissions should refer to File No. SR-NSCC-96-05 and should be submitted by April 2, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-36930; File No. SR-NSCC-95-17]

#### **Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change To Establish Additional Procedures for Placing Settling Members on Class A Surveillance and Collecting Clearing Fund and Other Collateral Deposits for Settling Members**

March 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 20, 1995, the 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 from interested persons.

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

The proposed rule change seeks to establish additional procedures in connection with placing NSCC members on Class A surveillance. The proposal also seeks approval of special clearing fund deposit and other collateral requirements for NSCC members placed on Class A surveillance.

#### 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 such statements.<sup>2</sup>

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

Rule 15, Section 3 of NSCC's rules provides that any settling member<sup>3</sup> shall furnish NSCC such adequate assurances of its financial responsibility and operational capability as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC. Section 4 of rule 15 further states that such adequate assurances may include, but are not be limited to, requiring increased clearing fund deposits of settling members. Section III.B.1.o. of Addendum B to NSCC's rules permits NSCC to place any settling member on Class A surveillance status due to the presence of any condition which could materially impact the operational or financial viability of a settling member which increases or may potentially increase exposure to NSCC.

NSCC's Board of Directors has determined that settling members can materially impact their financial viability by conducting significant clearing business for over-the-counter ("OTC") market makers or by engaging in OTC market making. In turn, this could potentially increase exposure to NSCC when the market maker, either

along or acting in concert with other market makers, takes net street-side trading positions that constitute a disproportionately large percentage of the total net street-side buys or net street-side sells in any issue (*i.e.*, the market maker dominates one side of the market in the issue) and has insufficient capital or access to capital to support the positions in dominated issues.

The potential for increased exposure to NSCC becomes greater to the extent that one or more additional risk factors are present. These additional risk factors include, without limitation:

- (1) Concentrated short selling in dominated issues;
- (2) Undue concentration of inventory in the market maker(s) for dominated issues;
- (3) Dominated issues also being IPSs less than six months past initial issuance particularly when the current value of the issue is significantly different from its initial sales price or there is undue concentration of inventory in the managing underwriter(s); and
- (4) Clearing positions of market makers in dominated issues away from their primary clearing brokers.

To the extent that a market maker's net street-side trading positions in dominated issues result from legitimate customer orders, the potential adverse impact on the financial viability of a settling member and the potential for increased exposure to NSCC would be mitigated.

In light of the foregoing, NSCC has filed for approval its policy of placing settling members on Class A surveillance if they clear for or are themselves OTC market makers, and they do not have sufficient capital or access to capital to support either potential increases in market making activity in dominated issues of the type described above or if there is the presence of the additional risk factors described above in current volumes of market maker activity. At its discretion, NSCC may elect not to place settling members on Class A surveillance if it has obtained sufficient assurances of a high degree of mitigating circumstances. However, the mere fact that a market maker has a large customer base may not necessarily constitute the necessary mitigating circumstances especially if the customers are retail and/or the market maker has a history of customer complaints or other adverse regulatory or disciplinary actions.

Pursuant to Rule 15, NSCC has filed for approval its proposed interim collateralization policy which would permit NSCC, in its discretion, to require settling members placed on

<sup>2</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>3</sup> NSCC Rule 1 defines a "settling member" as any NSCC member or non-clearing member, and except where a contrary intent is expressed in the rules, settling member includes a special representative.

<sup>7</sup> 17 CFR 200.30-3(a)(12) (1995).

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