

19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposed rule change was published in the **Federal Register** on January 24, 2005.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

## II. Description

The proposed rule change amends NSCC's Rules regarding the membership standards required of insurance companies. As a general matter, the current membership standards for insurance companies are based in part on ratings provided by rating agencies. The proposed rule replaces these standards in relevant part with a measure based on Risk-Based Capital ("RBC") ratios.

The RBC model was developed by the National Association of Insurance Commissioners ("NAIC"), the organization of insurance regulators from the 50 States, the District of Columbia, and the four U.S. territories. State insurance regulators created the NAIC in 1871 to address the need to coordinate regulation of multistate insurers. The NAIC has developed uniform financial reporting by insurance companies and an RBC model. The NAIC's RBC model is designed to calculate the minimum amount of capital that an insurer needs to support its overall business operations based on the degree of risk taken by the insurer and to protect the policyholders and business against adverse developments. Currently substantially all of the U.S. State insurance jurisdictions have adopted laws, regulations, or bulletins that are considered to be substantially similar to the NAIC's RBC for Insurers Model Act.

The calculation of the RBC ratio is based on an insurer's Total Adjusted Capital ("TAC"). TAC is comprised primarily of capital plus surplus divided by a capital level determined by the RBC formula called the Authorized Control Level Risk-Based Capital ("ACL RBC"). The ACL RBC is comprised of asset risk, credit risk, underwriting risk, and business risk.

In general, State regulatory authorities require no corrective action so long as an insurance company maintains an RBC ratio over 200%. NSCC's membership requirement would be an RBC ratio of 250% as derived from financial data reported by the insurance company to its State regulatory authority as part of its annual

statutorily-required financial statements. All current insurance company members of NSCC would meet the proposed 250% requirement.

Insurance companies will be required to submit the relevant data to NSCC on an annual basis at which time their compliance with the minimum standard will be reviewed by NSCC. In addition, any insurance company that fell below the 250% ratio during the course of the year will be required to notify NSCC immediately of this fact.

NSCC believes that the RBC standard is preferable to the existing NSCC requirements of using third-party ratings for the following reasons. First, the RBC standard should accurately represent the financial strength of an insurer because the RBC system is based on statutorily-required financial statements and it takes into account asset risks, credit risks, underwriting and pricing risks and the risk that the return from assets are not aligned with the requirements of the company's liabilities and general business risk. Second, the RBC standard is the industry benchmark. Third, the information needed to calculate the RBC ratio is readily available in the statutorily-required financial statements, which are to be provided to NSCC annually.

## III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.<sup>3</sup> The Commission finds that NSCC's proposed rule change is consistent with this requirement because it enhances NSCC's standards of financial responsibility applicable to insurance companies and therefore should help NSCC protect itself and its members from undue risk.

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> that the proposed rule change (File No. SR-NSCC-2004-07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51363; File No. SR-NSCC-2005-01]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend Its Operational Capability Requirement for Membership

March 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 19, 2005, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 this proposed rule change is to amend NSCC's Rules and Procedures regarding the operational capability requirement for membership.

#### 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.<sup>2</sup>

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

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

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

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

<sup>2</sup> Securities Exchange Act Release No. 34-51035 (January 13, 2005), 70 FR 3413.

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

<sup>4</sup> 15 U.S.C. 78s(b)(2).

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

NSCC is proposing to amend Section I(A)(3) of Addendum B and Addendum I, Section I(3) of Addendum Q, and Section I(2) of Addendum R of NSCC's Rules and Procedures concerning the operational capability requirements of applicants for membership.

NSCC's current rules specify that an applicant must "have adequate personnel capable of handling transactions with the Corporation [NSCC] and adequate physical facilities, books and records and procedures to fulfill anticipated commitments to and to meet the operational requirements of the Corporation [NSCC]." NSCC believes that these provisions may be interpreted to impose upon NSCC an obligation to make determinations with respect to these particular aspects of members' operational capability. NSCC ordinarily leaves such determinations to the members' designated examining authorities. The operational capability that NSCC ordinarily focused upon during the application process is the applicant's ability to appropriately communicate with NSCC; that is, the applicant's ability to input data to NSCC and to receive output from NSCC on a timely and accurate basis.

NSCC believes that it is appropriate to clarify these sections of the rules so that they reflect the practices of NSCC and so that there will be no misunderstandings as to their meaning. The text of the above-referenced sections of NSCC's Rules would be amended to delete references to adequate personnel and adequate facilities, books, and records that are extraneous to the ability of applicants to communicate with NSCC. In place, these sections will state that an applicant must "be able to satisfactorily communicate with the Corporation [NSCC] \* \* \*." NSCC will continue to retain the right to examine any aspect of an applicant's or member's business pursuant to the provisions of NSCC Rule 15.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>3</sup> and the rules and regulations thereunder applicable to NSCC because the proposed rule change will clarify NSCC's rules and procedures with regard to requirements imposed on applicants for membership. By eliminating a potential misinterpretation of its membership

requirements, NSCC believes that it will thereby provide enhanced protections to NSCC and its members and will assist NSCC in assuring the safeguarding of funds and securities in NSCC's control or for which NSCC is responsible.

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

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

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

Written comments relating to the proposed rule change have not yet 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.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2005-01 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NSCC-2005-01. This file

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at <http://www.nsc.com/legal>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2005-01 and should be submitted on or before April 7, 2005.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51358; File Nos. SR-NYSE-2004-24; SR-NASD 2004-141]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the New York Stock Exchange, Inc., and the National Association of Securities Dealers, Inc., To Prohibit Participation by a Research Analyst in a Road Show Related to an Investment Banking Services Transaction and To Require Certain Communications About an Investment Banking Services Transaction To Be Fair, Balanced and Not Misleading**

March 10, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>3</sup> 15 U.S.C. 78q-1.