

DHGS60399 Special Assistant to the Assistant Secretary for Children and Families. Effective October 03, 2008.

*Section 213.3317 Department of Education*

DBGS00672 Confidential Assistant to the White House Liaison. Effective October 10, 2008.

*Section 213.3323 Federal Communications Commission*

FCGS80008 Special Assistant to the Chairman. Effective October 15, 2008.

*Section 213.3325 United States Tax Court*

JCGS60081 Chambers Administrator to the Chief Judge. Effective October 01, 2008.

CGS60058 Chambers Administrator to the Chief Judge. Effective October 03, 2008.

*Section 213.3327 Department of Veterans Affairs*

DVGS60058 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective October 31, 2008.

DVGS60107 Legislative Assistant to the Assistant Secretary for Congressional and Legislative Affairs. Effective October 31, 2008.

*Section 213.3331 Department of Energy*

DEGS00679 Assistant Press Secretary to the Director, Public Affairs. Effective October 10, 2008.

*Section 213.3332 Small Business Administration*

SBGS00576 Deputy Assistant Administrator for the Office of Communications and Public Liaison to the Assistant Administrator for Communications and Public Liaison. Effective October 16, 2008.

*Section 213.3337 General Services Administration*

GS GS00170 Special Assistant to the Chief of Staff. Effective October 10, 2008.

*Section 213.33 Merit System Protection Board*

MPGS60014 Counsel to the Chairman. Effective October 07, 2008.

*Section 213.338 National Endowment for the Humanities*

NHGS90082 Special Assistant to the Chairman and Director of Government and Community Relations to the Deputy Chairman. Effective October 10, 2008.

*Section 213.3384 Department of Housing and Urban Development*

UGS60190 Special Policy Advisor to the Assistant Secretary for Housing, Federal Housing Commissioner. Effective October 03, 2008.

*Section 213.3394 Department of Transportation*

DTGS60364 Special Assistant for Transportation Policy to the Assistant Secretary for Transportation Policy. Effective October 10, 2008.

DTGS60357 Special Assistant to the White House Liaison and Scheduling and Advance to the Director for Scheduling and Advance. Effective October 24, 2008.

DTGS60311 Special Assistant to the Chief of Staff. Effective October 31, 2008.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.

Office of Personnel Management.

**Howard Weizmann,**

*Deputy Director.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59044; File No. SR-NSCC-2007-08]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Amend Membership Disqualification Criteria Rules

December 3, 2008.

#### I. Introduction

On April 30, 2007, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on February 7, 2008, and on March 18, 2008, amended proposed rule change SR-NSCC-2007-08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on July 18, 2008.<sup>2</sup> The Commission received no comment letters. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

The purpose of this filing is to amend the NSCC rules as they relate to

membership disqualification criteria in an effort to create more uniformity between the rules of NSCC and the rules of NSCC's affiliates, the Fixed Income Clearing Corporation ("FICC") and The Depository Trust Company ("DTC").

Currently, Addendum S of NSCC's rules sets forth its policy as to standards relating to competence for membership. Addendum S includes both objective and subjective factors that may be considered by NSCC in its evaluation of an applicant or of the continued membership of a member. Going forward, NSCC seeks to amend its rules to only include those disqualification criteria that can be objectively monitored by Risk Management staff. For example, NSCC proposes to delete from its rules specific references to criteria that may not be reported in a regulatory background check, such as an entity being subject to "heightened supervision" by a regulatory body. NSCC is proposing to include in its rules a general provision to permit consideration of events with respect to an applicant or member that may not be expressly mentioned but that may impact an applicant's or member's suitability as a member.

In addition, pursuant to NSCC's current disqualification criteria, NSCC can consider the criteria with respect to a person or entity that has "significant managerial responsibility" over the applicant or member. Because it is not easily ascertainable as to what entities or individuals have "significant managerial responsibility" over a particular entity, NSCC is proposing to amend these provisions in the rules so that they are consistent with its internal surveillance procedures. Going forward, NSCC will extend the reach of certain disqualification criteria to persons and entities acting as "controlling management," which will include those officers of the entity that are currently screened by Risk Management staff pursuant to internal procedures.

Specifically, NSCC's disqualification criteria will now include:

- (i) An applicant or member being subject to statutory disqualification as defined in Section 3(a)(39) of that Act.<sup>3</sup>
- (ii) An applicant, member, or its controlling management making a misstatement of material facts; committing fraudulent acts; or being

<sup>3</sup> While this provision currently exists in the rules, it will be moved within the rules and will be grouped with all other disqualification criteria. The NSCC rules will also provide that applicants and members must notify NSCC if any member of its controlling management is or becomes subject to a statutory disqualification, as defined in Section 3(a)(39) of the Act.

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

<sup>2</sup> Securities Exchange Act Release No. 58123 (July 9, 2008), 73 FR 41390.

convicted of any of the crimes listed in the rule.

(iii) An applicant, member, or its controlling management being permanently or temporarily enjoined from acting on behalf of a financial institution such as a broker-dealer.

(iv) An applicant or member's suspension or termination from participation in a national securities association, exchange registered under the Exchange Act, a self-regulatory organization, clearing agency, or securities depository.

Pursuant to the proposed change, NSCC will continue to be able to cease to act for a member when any of the factors in sections (i) through (iv) above are present. Addendum S will be struck entirely from the rules, and the listed disqualification criteria will be included in NSCC's proposed Rule 2A "Initial Membership Requirements."<sup>4</sup>

### III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to remove impediments to the perfection of a national system for the prompt and accurate clearance and settlement of securities transactions and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.<sup>5</sup> The Commission believes that NSCC's rule change, which refines NSCC's rules and procedures with regard to applicants and members, is consistent with these obligations and in general will protect investors and the public interest.

### 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. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.

<sup>4</sup> NSCC has also filed, and the Commission has published notice of, proposed rule change SR-NSCC-2006-17 which seeks to reorganize NSCC's rules related to membership standards and membership requirements. Securities Exchange Act Release No. 58100 (July 3, 2008), 73 FR 39759 (July 10, 2008) [SR-NSCC-2006-17].

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-2007-08) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59039; File No. SR-NYSEArca-2006-21]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data

December 2, 2008.

On May 23, 2006, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change ("Proposal") to establish fees for the receipt and use of certain market data that the Exchange makes available. The Proposal was published for comment in the **Federal Register** on June 9, 2006.<sup>3</sup> On October 12, 2006, the Commission issued an order, by delegated authority, approving the Proposal.<sup>4</sup> On November 6, 2006, NetCoalition ("Petitioner") submitted a notice, pursuant to Rule 430 of the Commission's Rules of Practice, indicating its intention to file a petition requesting that the Commission review and set aside the Delegated Order.<sup>5</sup> On November 8, 2006, the Exchange submitted a response to the Petitioner's Notice.<sup>6</sup> On November 15, 2006, Petitioner submitted its petition requesting that the Commission review

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 53952 (June 7, 2006), 71 FR 33496 (June 9, 2006).

<sup>4</sup> Securities Exchange Act Release No. 54597 (October 12, 2006) 71 FR 62029 (October 20, 2006) ("Delegated Order").

<sup>5</sup> Letter from Markham C. Erikson, Executive Director and General Counsel, NetCoalition, to the Honorable Christopher Cox, Chairman, SEC, dated November 6, 2006 ("Notice").

<sup>6</sup> Letter from Mary Yeager, Corporate Secretary, NYSE Arca Inc., to the Honorable Christopher Cox, Chairman, SEC, dated November 8, 2006 ("NYSE ARCA Petition Response").

and set aside the Delegated Order.<sup>7</sup> On December 27, 2006, the Commission issued an order: (1) Granting Petitioner's request for the Commission to review the Delegated Order; (2) allowing any party or other person to file a statement in support of or in opposition to the action made by delegated authority; and (3) continuing the effectiveness of the automatic stay provided in Rule 431(e) of the Commission's Rules of Practice.<sup>8</sup> The Commission received 25 comments regarding the Petition.<sup>9</sup>

On June 4, 2008, the Commission published notice of a proposed order ("Draft Order") approving the NYSE Arca proposed fees to give the public an additional opportunity to comment.<sup>10</sup> The Commission received 16 comments and three economic assessments in response to the Draft Order.

The Commission has considered the Petition, comments, and economic assessments submitted in response to the Proposal, Petition, and Draft Order. For the reasons described below, it is setting aside the earlier action taken by delegated authority and approving the Proposal directly.

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<sup>8</sup> Securities Exchange Act Release No. 55011 (December 27, 2006).

<sup>9</sup> The comments on the Petition, as well as the earlier comments on the Proposal, are identified and summarized in section III below. NYSE Arca's responses to the commenters are summarized in section IV below. Comments on the Draft Order are summarized in section V below.

<sup>10</sup> Securities Exchange Act Release No. 57917 (June 4, 2008), 73 FR 32751 (June 10, 2008) ("Draft Order").