

proposes to eliminate the ability of members subject to Exchange Act Rule 15c3-1 to request an exemption from the requirements, and to strike NASD Rule 1022 from the list of rules in NASD Rule 9610(a) from which a member may seek exemptive relief. NASD members that are exempt from or otherwise not subject to Exchange Act Rule 15c3-1 would not be subject to the requirements of either NASD Rule 1022(b) or 1022(c) and thus no longer required to seek exemptive relief from them.

The Commission believes that the proposed changes are consistent with the Act and the rules and regulations thereunder. Specifically, the Commission believes that the proposal to identify the classes of brokers or dealers that are required to designate a FINOP or an Introducing FINOP will protect investors and the public interest by helping to ensure that the financial and operations personnel of broker-dealers subject to Exchange Act Rule 15c3-1 have the training and competence needed to ensure the member's compliance with applicable net capital, recordkeeping and other financial and operational rules.

With regard to the Ad Hoc Committee's contention that the proposal should not apply to certain limited function broker-dealers, the Commission agrees with NASD Regulation's assertion that compliance with the Commission's net capital and other financial and operational rules does not depend on the size of a broker-dealer's business.¹⁷ As noted above, the Commission believes the proposal will help to ensure NASD members' compliance with applicable net capital, recordkeeping, and other financial and operational rules. In addition, the Commission does not believe that the proposal will create a significant competitive disadvantage for new limited function broker-dealers who will be required to register a FINOP or an Introducing FINOP. In this regard, the Commission notes that a limited function broker-dealer will be able to employ a FINOP or an introducing FINOP on a part-time basis.

The Commission finds that the proposed changes to NASD Rule 9610(a) are consistent with the Act because they clarify NASD Rule 9610(a). Specifically, the amendments to NASD Rule 9610(a) clarify that the Rule 9600 Series merely sets forth procedures for seeking exemptive relief, and that the type of relief that may be requested, and the authority to grant it, is found in the rules listed in NASD Rule 9610(a). In

addition, the amendments to NASD Rule 9610(a) make NASD Rule 9610(a) consistent with NASD Rule 1022, as amended, by deleting NASD Rule 1022 from the list of rules from which a member may seek exemptive relief.

Finally, the Commission finds that the proposal to amend NASD Rule 1022(c)(3) by adding a reference to paragraph (b)(2) of NASD Rule 1022 is consistent with the Act because it will help to clarify the application of NASD Rule 1022(c)(3).

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NASD-00-77) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44322; File No. SR-NSCC-00-09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Processing Certain Securities Undergoing Reorganization

May 18, 2001.

On July 12, 2000, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSCC-00-09) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on March 9, 2001.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

NSCC's rules permit NSCC to continue to process certain securities

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 44032 (March 3, 2001), 66 FR 14237.

undergoing reorganization or issuing dividends and specify how NSCC shall handle those issues. However, not all types of reorganizations or dividends fit the procedures specifically set forth in the rules. Ordinarily, this would require that the affected security be exited from the applicable system. Exiting the affected security from the applicable system poses a burden on the financial investment community when the issue is widely traded.

The proposed rule change modifies NSCC's Rules and Procedures to give NSCC the flexibility to process in the continuous net settlement ("CNS"), balance order, or other related system, on an exception basis, securities that would not otherwise have been eligible for processing to the extent NSCC has the capability to do so. The proposed rule change provides that in such circumstance, NSCC would issue a notice to its members setting forth how NSCC would process the security.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).³ Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that NSCC's rule change meets this standard because the proposed rule change allows NSCC to process otherwise ineligible securities in NSCC's CNS system, balance order, or other related system, on an exception basis. By providing a means whereby these securities, which previously would not have been eligible for processing through NSCC, can be processed through and receive the benefits of NSCC's highly automated systems, the proposed rule change facilitates the prompt and accurate clearance and settlement of such securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular 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-00-09) be hereby approved.

³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ See NASD Regulation Letter, *supra*, note 11.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44334; File No. SR-SCCP-2001-04]

Self-Regulatory Organizations; The Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change Relating to the Establishment of Fines for Late Margin Call Payments and an Appeal Process for Such Fines

May 22, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), as amended, notice is hereby given that on, February 27, 2001, The Stock Clearing Corporation of Philadelphia ("SCCP") 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 SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.¹

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 amend SCCP Rule 9, Margin Accounts, to include a fine schedule for late payments of margin calls. The proposed rule change will also allow SCCP to amend Rule 23, Right of Appeal, to provide for a right of appeal for margin members² who wish to appeal imposition of the fine for late payments of margin calls.

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

In its filing with the Commission, SCCP 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. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(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 implement late fines on SCCP margin members who are late meeting a margin call payment. The proposed rule change is intended to encourage the timely payments of margin calls. Rule 9 provides, in part, that SCCP will provide margin accounts for margin members that clear and settle their transactions through SCCP's omnibus clearance and settlement account. SCCP provides margin for such accounts based on its procedures and Regulation T of the Board of Governors of the Federal Reserve System. Margin members who are designated as specialists or alternate specialists in a security receive margin credit of 15% with respect to positions in that security held in their specialist accounts. Members holding positions for which they are not designated as a specialist or alternate specialist receive non-specialist margin credit of 50%. SCCP may issue margin calls to any margin member when the margin requirement exceeds the account equity. Pursuant to SCCP procedures, margin call payments are due by 12:00 p.m. EST the business day of the call. Late margin payments are not currently subject to a specific late fine although members may be subject to possible disciplinary action pursuant to SCCP Rule 22.

SCCP believes that implementation of the proposed fine schedule will reduce the number of incidents of late margin call payments by members. Notwithstanding the late margin call payment fine, members would continue to be subject to possible disciplinary action pursuant to SCCP Rule 22.

Currently, Rule 23 provides, in relevant part, a SCCP participant³ with the right to appeal from any decision or decisions of SCCP resulting in sanctions or penalties imposed under Rule 20 or 22.⁴ SCCP proposes to include fines imposed under Rule 9 to the list of

applicable actions specified in Rule 23. The proposed inclusion in Rule 23 of a margin member's right to appeal a fine for late margin call payments will provide members a process by which to dispute implementation of such fines.

SCCP believes that the proposed rule change will facilitate ensuring compliance with SCCP's rules regarding margin and Regulation T and is therefore consistent with section 17A(b)(3)(A) of the Act and specifically with section 17A(b)(3)(F) of the Act in that it is designated to promote the prompt and accurate settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system in that the proposed fine for late margin calls will encourage margin members to submit margin payments in a timely manner therefore reducing the frequency of late margin call payments.

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

SCCP does not believe that the proposed rule change will impose any inappropriate 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 were either solicited or received.

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 SCCP 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

⁴ 17 CFR 200.30-3(a)(12).

¹ A copy of the text of SCCP's proposed rule change and the attached exhibits are available at the Commission's Public Reference Section or through SCCP.

² The term "margin member" means participants who are Philadelphia Stock Exchange specialists, alternate specialists, and other Phlx floor members specifically approved by the National Securities Clearing Corporation to effect trading in a margin account in accordance with SCCP Rule 9.

³ The term "participants" means persons or organizations which have qualified for membership in SCCP pursuant to SCCP Rules 2 and 3. Participants are also referred to in SCCP Rules as "members."

⁴ See SCCP Rule 23 section 1(c).