

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51035; File No. SR-NSCC-2004-07)

January 13, 2005

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend the Membership Standards Required of Insurance Companies

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on October 26, 2004, 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 regarding the membership standards required of insurance companies.

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.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by NSCC.

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

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 by 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 to measure 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 for life insurers.

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 proposes that its 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 statutory financial statements. All current insurance company members of NSCC would meet the proposed 250% requirement.

Insurance companies would 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 would 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 accurately represents the financial strength of an insurer because the RBC system is based on statutory financial statements, taking 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 statutory financial statements, which are to be provided to NSCC annually.

NSCC's membership standards are intended to protect NSCC and its members from undue risk while providing broad access to NSCC services. Because the proposed rule change relates to the standards of financial responsibility applicable to insurance companies, NSCC believes that it will assist NSCC in assuring the safeguarding of funds and securities in NSCC's control or for which NSCC is responsible. For this reason, NSCC believes the proposed rule

change is consistent with the requirements of Section 17A of the Act³ and the rules and regulations thereunder applicable to NSCC.

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

NSCC believes that the proposed rule change will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(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.

³ 15 U.S.C. 78q-1.

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. Please include File Number SR-NSCC-2004-07 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-2004-07. 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 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-2004-07 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

J. Lynn Taylor
Assistant Secretary

⁴ 17 CFR 200.30-3(a)(12).