

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52976; File No. SR-NSCC-2005-15)

December 19, 2005

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating To Buy-Ins in Its Continuous Net Settlement System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on December 1, 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 modify NSCC’s Rules with regard to CNS Buy-Ins in an effort to harmonize the buy-in rules of the industry and to assist NSCC members in reducing their exposure related to buy-ins.

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>

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<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.

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

The purpose of this filing is to modify NSCC's Rules with regard to CNS Buy-Ins in an effort to harmonize the buy-in rules of the industry and to assist NSCC members in reducing their exposure related to buy-ins. At the request of participants and after consultation with the Buy-In Subcommittee of the Securities Industry Association, NSCC proposes to modify its Rules to create a new buy-in retransmittal procedure that may be utilized by NSCC Members receiving buy-in notices initiated outside of the CNS System ("Buy-In Retransmittal Notice").<sup>3</sup> Existing NSCC fees related to CNS Buy-Ins will remain unchanged.

Current Process for CNS Buy-Ins

Currently under NSCC's Rules (except with respect to securities subject to a voluntary corporate reorganization), a member having a long position at the end of any day ("Originator") may submit to NSCC a Notice of Intention to Buy-In ("Buy-In Notice") specifying the quantity of securities which it intends to buy-in ("Buy-In Position"). The Buy-In Position is given high priority for allocation from the night cycle on N+1 through completion of the CNS day cycle at approximately 3:00 PM eastern standard time on N+2.<sup>4</sup>

If the Buy-In Position (or a portion thereof) remains unfilled after the evening allocation on N+1, NSCC issues CNS Retransmittal Notices on the following morning (N+1) to a sufficient number of members with short positions. NSCC issues CNS Retransmittal Notices in an aggregate quantity at least equal to the Buy-In Position. In no case will the Buy-In liability of a member exceed the Buy-In Position or the total short position of the member. If several

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<sup>3</sup> The specific rules being amended are Rule 11, "CNS System," and Procedures VII, "CNS Accounting Operation," and X, "Execution of CNS Buy-Ins."

<sup>4</sup> The day the Buy-In Notice is submitted to NSCC is referred to as N, with N+1 and N+2 referring to the succeeding days. Each CNS day begins in the evening and includes an evening allocation of securities and a daytime allocation of securities.

members have short positions with the same age, all such members are issued CNS Retransmittal Notices even if the total of their short position exceeds the Buy-In Position. If the Buy-In Position is not satisfied by 3:00 PM on N+2, the buy-in may be executed.

This current process will remain in effect. Buy-In Notices transmitted by a member which is the original submitter will be referred to as “Original Buy-In Notices.”

#### Proposed Procedure for CNS Buy-In Retransmittals

At times, an NSCC member will be in receipt of a buy-in notice initiated outside of the CNS system while at the same time be failing to receive shares from CNS in the same security. Recognizing that such externally initiated buy-ins may expire before the time the expiration period that NSCC’s Rules currently provide as the expiration for CNS buy-ins (i.e., the current N+2 expiration), NSCC is proposing a new procedure to permit retransmittals of such buy-ins with an appropriately shortened execution time frame.

Accordingly, the new procedure would provide that an NSCC member which has a long position in CNS at the end of any day (i.e., a fail to receive) and which is in receipt of a buy-in notice for securities of the same CUSIP that was initiated outside of the CNS System may submit a “Buy-In Retransmittal Notice” to NSCC. If the Buy-In Position (or a portion thereof) that was the subject of the Buy-In Retransmittal Notice was not satisfied by 3:00 p.m. on N+1, the buy-in could be executed. The Buy-In Retransmittal Notice would identify the entity that initiated the buy-in against the member.

The differences between a Buy-In Retransmittal Notice and an Original Buy-In Notice would be as follows:

- An Original Buy-In Notice will refer to a Buy-In Notice transmitted by a member for which the member is the original submitter. A Buy-In Retransmittal Notice

will refer to a Buy-In Notice submitted by a member where the member has received a buy-in notice outside of the CNS system with respect to securities of the same CUSIP.

- The member submitting a Buy-In Retransmittal Notice will receive an elevated priority for CNS allocations upon NSCC's receipt of the notice. The member submitting an Original Buy-In Notice will continue to receive elevated priority on the morning of N+1.
- The member submitting a Buy-In Retransmittal Notice will be provided with five additional fields to be used to identify the entity or entities that initiated the buy-in against the member. At least one such entity other than the member must be identified or NSCC will reject the Buy-In Retransmittal Notice.
- For Buy-In Retransmittal Notices, NSCC will transmit CNS Retransmittal Notices to CNS short members upon receipt of the Buy-In Retransmittal Notice on N. The CNS Retransmittal Notice will identify both the submitting member and the entity or entities that initiated the buy-in against the member. For Original Buy-In Notices, NSCC will continue to transmit CNS Retransmittal Notices to short members on the morning of N+1.
- A buy-in based on a Buy-In Retransmittal Notice may be executed on N+1 if the Buy-In Position (or a portion thereof) is not satisfied by 3:00 p.m. on N+1. The execution of a buy-in based on an Original Buy-In Notice will continue to be at 3:00 p.m. on N+2.

### Technical Correction

In addition to modifying NSCC's Rules and Procedures to reflect the above changes, NSCC will also make a technical correction to Procedure X, "Execution of Buy-Ins – CNS System." The procedure states that members who receive CNS Retransmittal Notices and do not satisfy them assume liability for the loss, if any, which occurs as a result of the buy-in and that those members with the oldest short positions after the evening cycle on N+2 will first be held liable for an executed buy-in. Procedure X should reflect that it is the oldest short positions after the day cycle on N+2 that will first be held liable for an executed buy-in.

### Implementation

If approved by the Commission, NSCC plans to implement these changes on a pilot basis open to all members on the later to occur of January 13, 2006, or within one week of the Commission's approval of the proposed rule filing. The pilot will be limited to buy-ins of CNS eligible NYSE listed securities. NSCC anticipates that the pilot phase will be completed within thirty calendar days of implementation at which time buy-ins of all other CNS eligible securities will be permitted under these proposed changes. At that time the pilot will cease. NSCC will notify its members by an Important Notice of the specific date on which the pilot will expire and the proposed buy-in procedures are available for use with all CNS eligible securities.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to NSCC because it will assist NSCC members in reducing their buy-in related exposure, thereby promoting the prompt and accurate clearance and settlement of securities transactions.

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<sup>5</sup> 15 U.S.C. 78q-1.

(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

The proposed rule change was prepared after consultation with the Buy-In Committee of the Securities Industry Association. 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-2005-15 in the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NSCC-2005-15. 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, 100 F Street, NE, Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site, [www.nsc.com/legal](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-2005-15 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.<sup>6</sup>

Jonathan G. Katz  
Secretary

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