

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51600; File No. SR-NSCC-2005-01)

April 22, 2005

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change to Amend its Operational Capability Requirement for Membership

I. Introduction

On January 19, 2005, the National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change File No. SR-NSCC-2005-01 pursuant to Section 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 March 17, 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 Section I.A.3. of Addendum B, Section I.A.3. of 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 applicants’

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

<sup>2</sup> Securities Exchange Act Release No. 51363 (March 11, 2005), 70 FR 13060.

and members' operational capability. NSCC ordinarily leaves such determinations to the applicants' and 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 its Rules and Procedures 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 and Procedures will 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.

### 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 eliminates a potential misunderstanding with regard to its membership requirements and therefore helps NSCC better protect itself and its members from undue risk.

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

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-2005-01) be and hereby is approved.

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

Margaret H. McFarland  
Deputy Secretary

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

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