

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55366; File No. SR-NSCC-2006-05)

February 27, 2007

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Wind-Down of a Member

I. Introduction

On March 28, 2006, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) and on September 28, 2006, amended proposed rule change SR-NSCC-2006-05 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 December 20, 2006.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change as modified by Amendment No. 1.

II. Description

The rule change adds a new Rule 42, Wind-Down of a Member, Fund Member, or Insurance Carrier Member, to NSCC’s Rules to address a situation where a member notifies NSCC that it intends to wind down its activities, and NSCC determines in its discretion that it must take special action in order to protect itself and its participants.³

The rule allows NSCC to determine that a member is a wind-down member and sets forth the conditions NSCC using its discretion may place on a wind-down member and the actions NSCC using its discretion may take with respect to a wind-down member to protect itself and its

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 54928 (December 13, 2006), 71 FR 76414.

³ Similar proposed rule changes have been filed by The Depository Trust Company [File No. SR-DTC-2006-07] and the Fixed Income Clearing Corporation [File No. SR-FICC-2006-05].

members. Such actions may include restricting or modifying the wind-down member's use of any or all of NSCC's services and requiring the wind-down member to post increased clearing fund deposits. NSCC will retain all of its other rights set forth in its rules and membership agreements, including the right to declare the wind-down member insolvent, if applicable, and to cease to act for the member.

The rule is designed to ensure that NSCC has the needed flexibility to appropriately manage the risks presented by an entity in crisis that remains a member of NSCC. This is particularly important to preserve orderly settlement in the marketplace and to minimize the risk of loss to NSCC and its members. The rule sets forth in a single rule NSCC's rights and the actions it may take in such a situation. Currently, these rights and actions are either permitted elsewhere in NSCC's rules or are permitted pursuant to NSCC's emergency authority. By placing NSCC's rights in a single rule, however, the rule change should provide clarity and a clear legal basis for NSCC's rights or actions taken with respect to a wind-down member.

NSCC also believes that the proposed rule is designed to minimize the need for rule waivers.

III. Discussion

Section 17A(b)(3)(F) of the Act provides that the rules of a clearing agency should be designed to safeguard securities and funds which are in the custody or control of the clearing agency or for which it is responsible.⁴ The sudden or unanticipated financial or operational difficulties of a clearing member or the termination of its trading activities may create uncertainty among industry participants about NSCC's ability to meet its settlement obligations on time and concern about the risk to the assets of the clearing agency or of its members. The

⁴ 15 U.S.C. 78q-1(b)(3)(F).

proposed rule change clarifies that NSCC has discretionary power in a wind-down situation to take certain actions to assure the ongoing operations of itself and to protect the securities and funds of NSCC and of its members. By making clear in a single rule the authority NSCC has under its rules to facilitate the orderly wind down of a member's activities, the proposed rule change is designed to assure the safeguarding of securities or funds which are in NSCC's control or for which it is responsible.⁵

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.⁶

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-2006-05), as modified by Amendment No. 1, be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Florence E. Harmon
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).