

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53528; File No. SR-NSCC-2005-15)

March 21, 2006

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

I. Introduction

On December 1, 2005, the National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-NSCC-2005-15 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).<sup>1</sup> Notice of the proposal was published in the Federal Register on December 27, 2005.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

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 is modifying 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.<sup>3</sup> Existing NSCC fees related to CNS Buy-Ins will remain unchanged.

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

<sup>2</sup> Securities Exchange Act Release No. 52976 (December 19, 2005), 70 FR 76485.

<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.”

### 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 that it intends to buy-in ("Buy-In Position"). The Buy-In Position is given high priority for allocation from the CNS 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 allocation (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 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."

### 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

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<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.

period that NSCC's Rules currently provide as the expiration for CNS buy-ins (i.e., the current N+2 expiration), NSCC will utilize a new procedure to permit retransmittals of such buy-ins with an appropriately shortened execution time frame.

Accordingly, the new procedure provides 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 is the subject of the Buy-In Retransmittal Notice is not satisfied by 3:00 p.m. on N+1, the buy-in can be executed. The Buy-In Retransmittal Notice will 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 are as follows:

- An Original Buy-In Notice refers to a Buy-In Notice transmitted by a member for which the member is the original submitter. A Buy-In Retransmittal Notice refers 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 receives an elevated priority for CNS allocations upon NSCC's receipt of the notice. The member submitting an Original Buy-In Notice continues to receive elevated priority on the morning of N+1.
- The member submitting a Buy-In Retransmittal Notice is 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 transmits CNS Retransmittal Notices to CNS short members upon receipt of the Buy-In Retransmittal Notice on N. The CNS Retransmittal Notice identifies both the submitting member and the entity or entities that initiated the buy-in against the member. For Original Buy-In Notices, NSCC continues 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 continues 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 is also making technical correction to Procedure X, "Execution of Buy-Ins – CNS System." The procedure states that members that 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 will now 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

NSCC plans to implement these changes on a pilot basis open to all members as soon as possible following 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.

### III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>5</sup> The Commission finds that NSCC's proposed rule change is consistent with this requirement because the buy-in retransmittal procedures are designed to harmonize NSCC's buy-in rules with the buy-in rules of other self-regulatory organizations. Harmonization of buy-in rules among self-regulatory organizations should increase the efficiency of the buy-in execution process and should help to promote the prompt and accurate settlement of securities transactions.

### 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.

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<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (File No. SR-NSCC-2005-15) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Nancy M. Morris  
Secretary

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<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).