5200. Intermarket Trading System/ Computer Assisted Execution System

5210. Definitions

(a)–(h) No Change.

(i) ''CAES'' means the ''Computer Assisted Execution System'', the computerized order routing and execution facility for ITS Securities, as from time to time modified or supplemented, that is operated by The Nasdaq Stock Market, Inc. and made available to NASD members. CAES functionality is offered through the ''Nasdaq National Market Execution System'' or ''NNMS'' which operates pursuant to the Rule 4700 Series.

5220. ITS/CAES Registration

In order to participate in ITS, a market maker must be registered with the Association as an ITS/CAES Market Maker in each security in which a market will be made in ITS. Such registration shall be conditioned upon the ITS/CAES Market Maker's continuing compliance with the following requirements:

(a) registration as a CQS market maker pursuant to Rule 6320 and compliance with the Rule 6300 Series;

(b) execution of an ITS/CAES Market Maker application agreement with the Association at least two days prior to the requested date of registration;

(c) *participation in NNMS in accordance with the Rule 4700 and 5200 Series;*

([c]*d*) compliance with SEC Rule 15c3–1;

([d]*e*) compliance with the ITS Plan, SEC Rule 11Ac1–1 and all applicable Rules of the Association;

([e]*f*) the maintenance of continuous two-sided quotations in the absence of the grant of an excused withdrawal or a functional excused withdrawal by the Association;

([f]*g*) maintenance of the physical security of the equipment used to interface with the ITS System located on the premises of the ITS/CAES Market Makers to prevent the unauthorized entry of communications into the ITS System; and

([g]*h*) acceptance and settlement of each ITS System trade that the ITS System identifies as effected by such ITS/CAES Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance of settlement of such identified ITS System trade by the clearing member on the regularly scheduled settlement date.

5221. Suspension or Revocation of ITS/ CAES Registration

No Change.

5230. ITS Operations

No Change.

5240. Pre-Opening Application—Opening by ITS/CAES Market Maker

No Change.

5250. Pre-Opening Application—Openings on Other Participant Markets

No Change.

5260. System Trade and Quotations

5261. Obligation To Honor System Trades

No Change.

5262. Trade-Throughs

No Change.

5263. Locked or Crossed Markets

No Change.

5264. Block Transactions

No Change.

5265. Authority To Cancel or Adjust Transactions

No Change.

6300. Consolidated Quotations Service (CQS)

No Change.

6400. Reporting Transactions in Listed Securities

No Change.

[FR Doc. 04–5114 Filed 3–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49353; File No. SR–NSCC–2003–09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend the Procedure for Determining Intraday Mark-to-the-Market Payments

March 2, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 20, 2003, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on October 20, 2003, amended 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

NSCC is proposing to amend Procedure XV to give NSCC more flexibility in determining the intraday mark-to-the-market amount it will collect from a member for unsettled positions.

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]

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

NSCC Rule 15 (Financial Responsibility and Operational Capability) provides that NSCC may obtain such adequate assurances of a member's financial responsibility and operational capability as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC, Settling Members, Municipal Comparison Only Members, Fund Members, Insurance Carrier Members, creditors, or investors.

Currently, Procedure XV (Clearing Fund Formula and Other Matters) describes the criteria for determining which securities meet classifications for additional mark-to-the-market payments for high risk/volatile issues and provides specific formulas that may be used to determine additional deposit amounts. Generally, NSCC assesses on an intraday basis an additional mark-to-the-market charge to a member when the member maintains a position in a security where the intraday exposure to NSCC is in excess of 10% of the member's excess net capital. In addition, with respect to illiquid unsettled positions, NSCC may request additional collateral if the member's net unsettled position in any one security is greater than 25% of the security's average daily volume.

[1] 15 U.S.C. 78s(b)(1).

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

NSCC is replacing the formulas currently reflected in its procedures with a more generalized provision to give NSCC the flexibility to determine what amount, if any, should be collected based on conditions that exist at that time.[3] In addition, the reference to the authority which permits this charge is being corrected to reflect NSCC Rule 15, section 4.

NSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act [4] and the rules and regulations thereunder applicable to NSCC because it will assure the safeguarding of funds and securities for which it is responsible by permitting NSCC to more appropriately collect collateral to cover its exposure from its members' unsettled positions.

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

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(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 35 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 90 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NSCC–2003–09. 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, comments should be sent in either hardcopy or by e-mail but not by both methods. 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.

All submissions should refer to File No. SR–NSCC–2003–09 and should be submitted by March 29, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–5116 Filed 3–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49352; File No. SR–NSCC–2003–03]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Execution Time for CNS Buy-Ins

March 2, 2004.

On March 24, 2003, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on March 14, 2003, amended proposed rule change File No. SR–NSCC–2003–03 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposed rule change was published in the **Federal Register** on January 16, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The purpose of the proposed rule change is to modify NSCC Procedures VII.J. ''CNS Accounting Operation, Recording of CNS Buy-Ins'' and X.A.1. ''Execution of Buy-Ins, CNS System, Equity Securities and Corporate Debt Securities'' with regard to the execution time of CNS buy-ins. Except with respect to securities subject to a voluntary corporate reorganization, a member having a long CNS position at the end of any day may submit to NSCC a notice of intention to buy-in (''buy-in notice'') specifying a quantity of securities (not exceeding such long CNS positions) the member intends to buy-in (''buy-in position''). The day the CNS buy-in notice is submitted is referred to as N, and N+1 and N+2 refer to the succeeding days. Each day commences in the evening and includes both an evening and daytime allocation. The CNS buy-in position is given high priority for allocation through N+2.

Pursuant to NSCC Procedure VII, if a CNS buy-in position is not satisfied at the end of the day cycle on N+2, the CNS buy-in may be executed. In effect, members have from the completion of the day cycle on N+2 to the close of the markets to execute the CNS buy-in. Operationally, as the day cycle generally completes at 3:10 p.m. eastern standard time (''e.s.t.''), participants face a narrow timeframe within which they may execute CNS buy-ins. In the event that settlement and recycle times are extended or delayed, that window of time is further reduced.

At the request of participants and after consultation with the Securities Industry Association Buy-In Committee, NSCC is modifying Procedures VII and X to permit the execution of CNS buy-ins beginning at 3 p.m. e.s.t. or at such time as established by NSCC because of market events (*e.g.*, days the marketplaces close early). NSCC will advise participants of any earlier execution time through an important notice five business days in advance. The change in time is not a requirement for executions of buy-ins but is to give

[3] Additional factors that NSCC may use in determining intraday mark-to-the-market requirements include but are not limited to (1) percent of total security float, (2) average daily security volume, (3) position size (quantity and value), (4) portfolio concentration, and (5) industry/sector concentration.

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 49061 (January 12, 2004), 69 FR 2641 (January 16, 2004).