

arbitrators with a reminder that the arbitrators must review the issue *de novo* and must not accord the staff's preliminary ruling any weight.

NASD Regulation notes, as described above, that eligibility determinations have always involved an element of staff discretion. Thus, adoption of the policy set forth above is not a substantive change in Rule 10304 or its interpretation; it is a change in the manner in which the staff exercises its discretion to administer the arbitration process under the Rule.

## 2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>2</sup> in that amending the policy for applying the eligibility provision of the Code serves the public interest by enhancing the perception of fairness of such proceedings by the parties to such proceedings. Unless otherwise expressly provided for in the Code, dispositive motions should be decided by the arbitrators because the arbitrators are the designated adjudicators of all issues of fact, law and procedure in an arbitration. To the extent the parties to such proceedings express increased satisfaction with the resolution of eligibility issues, the goal of providing the investing public with a fair, efficient and cost-effective forum for the resolution of disputes will have been advanced.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and subparagraph (e) of Rule 19b-4<sup>4</sup> thereunder in that it constitutes a stated policy, practice or interpretation with

respect to the meaning, administration, or enforcement of an existing rule.

At any time within 30 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-96-37 and should be submitted by November 22, 1996.

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

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-37877; File No. SR-NSCC-96-18]

### **Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change To Modify Procedures Relating to the Reconfirmation and Pricing Service**

October 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 30, 1996, the National Securities Clearing Corporation ("NSCC") filed with the Securities and

Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-96-18) as 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 persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The purpose of the proposed rule change is to modify NSCC's procedures relating to supplemental input into the Reconfirmation and Pricing Service ("RECAPS").

### **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 that 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 such statements.<sup>2</sup>

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

The purpose of the proposed rule change is to modify NSCC's procedures relating to RECAPS.<sup>3</sup> The proposed rule change will implement a request by the RECAPS Subcommittee of the Securities Operations Division of the Securities Industry Association to have members respond more effectively to transactions processed through RECAPS.

NSCC's Procedure II(G) currently provides that members with transactions that have not been reconfirmed after the processing of initial RECAPS input have an opportunity to submit supplemental input during the same RECAPS cycle. Supplemental input includes advisories, deletes, and as-of trades. An advisory allows a member to acknowledge a contraside submission that has not been reconfirmed after processing of initial RECAPS input. A delete permits a member to delete its own submission

<sup>2</sup> The Commission has modified the text of the summaries submitted by NSCC.

<sup>3</sup> RECAPS is NSCC's automated fail clearance system for eligible securities. RECAPS provides members an opportunity on a quarterly basis to reconfirm and reprice transactions that already have been compared.

<sup>2</sup> 15 U.S.C. 78o-3(b)(6).

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(e).

<sup>1</sup> 15 U.S.C. 78s(b)(1)(1988).

from RECAPS. An as-of trade enables a member to submit a transaction to RECAPS if it failed to submit the transaction as initial RECAPS input at the start of the RECAPS cycle.

The proposed rule change will make several modifications to NSCC's Procedure II(G) regarding RECAPS supplemental input. First, the proposed rule change will expand the range of responses by a member to a transaction submitted by a contraside that has not been reconfirmed after processing of initial RECAPS input ("unreconfirmed RECAP") by adding "don't knows" ("DKs") and rejects. The proposed rule change will require a member to respond to an unreconfirmed RECAP by submitting an advisory, a DK, or a reject and in the case of a reject by also indicating the reasons for the rejection (e.g., trade previously settled or different quantity).

The proposed rule change will provide that failure to respond to an unreconfirmed RECAP will result in the transaction being deemed DK'ed. The proposed rule change also will provide that a DK'ed transaction will extinguish the rights, if any, of the DK'ing member with respect to the transaction. Transactions of a member that have been DK'ed will be subject to the rules of the appropriate marketplace.

Second, the proposed rule change will eliminate deletes as a type of RECAPS supplemental input. The delete function is being removed because members do not use it, and therefore, there is no longer a need to maintain the delete function as part of the RECAPS system.

Third, the proposed rule change will add a new report to RECAPS. NSCC will make available to members a RECAPS activity report at the end of the RECAPS cycle. The RECAPS activity report will contain summary information regarding the member's overall activity during a particular RECAPS cycle, including the number of transactions submitted, the number of transactions that were reconfirmed, and the number of transactions that were DK'ed, rejected, or for which there was no response.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will promote the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds in the custody or control of NSCC or for which NSCC is responsible.

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

NSCC does not believe that the proposed rule change will impact 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 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 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 NSCC 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC.

All submissions should refer to the file number SR-NSCC-96-18 and should be submitted by November 22, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

<sup>4</sup> 17 CFR 200.30-3(a)(12)(1996).

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-37872; File No. SR-OCC-96-08]

**Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Regarding the Exercise of Certain Foreign Currency Options**

October 25, 1996.

On July 18, 1996 The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-OCC-96-08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> to permit the exercise of certain foreign currency options on the business day immediately preceding the expiration date of such options. Notice of the proposal was published in the Federal Register on September 12, 1996.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

**I. Description of the Proposal**

Under the rule change, OCC will permit the exercise of American-style<sup>3</sup> foreign currency and cross-rate foreign currency options (collectively, "currency options") on the business day immediately preceding their expiration date. OCC Rule 801(c) formerly prohibited the exercise of option contracts on the business day immediately preceding their expiration unless such options were American-style flexibly structured options.

At the time this exercise restriction was incorporated into OCC's rules, all option contracts expired on Saturday. The restriction ensured that there was adequate time for all unmatched transactions to be resolved and for OCC to receive and process exercise notices for the preliminary and final exercise by exception processing cycles that were then in effect. Since the implementation of the exercise restriction in Rule 801(c), OCC has adopted Friday night as the expiration date for all standardized

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> Securities Exchange Act Release No. 37655 (September 6, 1996), 61 FR 48193.

<sup>3</sup> An "American" or "American style" option contract is an option contract that may be exercised at any time from its commencement time until its expiration. In contrast, a "European style" option contract is an option contract that may only be exercised on its expiration.