

OMB APPROVAL

OMB Number: 3235-0045
 Expires: June 30, 2007
 Estimated average burden
 hours per response.....38

Page 1 of 57

SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549
 Form 19b-4

File No. SR - 2003 - 22
 Amendment No. 1

Proposed Rule Change by National Securities Clearing Corporation
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input type="checkbox"/>	Amendment <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action <input type="checkbox"/>	Date Expires <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document Exhibit 3 Sent As Paper Document

Description
 Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information
 Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
 Title
 E-mail
 Telephone Fax

Signature
 Pursuant to the requirements of the Securities Exchange Act of 1934,
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date
 By Vice President and Senior Counsel
 (Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change.

(a) The text of the proposed rule change is annexed hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization.

(a) The proposed rule change has been approved by the Board of Directors of NSCC.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) The proposed rule change amends Addenda B and I of NSCC's Rules to change the standards of financial responsibility required of applicants and members that are banks, trust companies and broker/dealers admitted as a Mutual Fund/Insurance Services Member under Rule 2, or as a Fund Member under Rule 51 of NSCC's Rules. Mutual Fund/Insurance Services Members and Fund Members are permitted to use NSCC's non-guaranteed services only.

The proposed revision (i) raises the minimum excess net capital requirement applicable to such broker/dealer applicants and members from \$25,000 in excess net capital, to \$50,000 in excess net capital; and (ii) changes the standards of financial responsibility required of banks and trust companies, by reference to different types of

criteria than currently used for this purpose. The effective date for the change as applied to current members will be two years from the date of Commission approval of this rule change. The proposed rule change also changes the established business history required of an applicant to become a Fund Member from three years to six months.

Amendment of Addenda B and I and Appendix 1 with respect to Financial Criteria

Addendum B establishes financial criteria applicable to Mutual Fund/Insurance Services Members and applicants admitted under Rule 2 of NSCC's Rules;¹ Addendum I establishes the financial criteria applicable to Fund Members and applicants admitted under Rule 51 of NSCC's Rules².

Increase of Minimum Excess Net Capital Required of Broker-Dealers Using Non-guaranteed Services

NSCC's current minimum excess net capital requirement applicable to broker-dealer applicants and members using non-guaranteed services was implemented in 1993. In 1998, NSCC increased its minimum excess net capital requirements applicable to broker/dealer applicants and members under Rule 2 using guaranteed services of NSCC from \$50,000 to \$500,000, subject to certain limited

¹ NSCC has revised Addendum B (Version 1) as set forth in Appendix 1 to NSCC's Rules (Version 2 of Addendum B). NSCC is informing members on a rolling basis when Version 2 is applicable to them. The provisions of Addendum B which are the subject of this proposed rule change are identical in Version 1 and Version 2. This proposed rule change therefore will amend both the text of Addendum B (Version 1) and Appendix 1 (Version 2 of Addendum B).

² Formerly, such members and applicants were also subject to supplemental terms applicable to Investment Fund transactions as set forth in Addendum V. Addendum V was eliminated pursuant to Commission approval of proposed rule change, SR-NSCC-2003-20, SEC Release No. 34-49598.

exceptions (i.e., a municipal securities brokers broker under Rule 15c3-1(a)(8) of the '34 Act is required to maintain \$100,000 in excess net capital and a clearing broker is required to maintain \$1,000,000 in excess net capital)³. No change was made to the financial requirements applicable to use of non-guaranteed services at that time. NSCC now believes it is appropriate to do so.

NSCC currently has 290 broker/dealer members to which the increased net excess capital requirement will apply, of which 13 have been identified as not meeting the increased capital requirement. The purpose of delaying effectiveness is to allow current members which do not meet the proposed increased excess net capital requirement to have sufficient time in which to obtain and apply additional capital, or make alternate arrangements such as clearing through another NSCC member, without disruption to their business.

NSCC currently requires a larger clearing fund deposit from broker/dealer members which have a minimum excess net capital of less than \$50,000 (i.e., a minimum of \$10,000 - \$20,000 - \$40,000, as compared to \$5,000 - \$10,000 - \$20,000, depending upon settlement debit history). When the proposed minimum excess net capital requirement is increased to \$50,000, the higher minimum clearing fund requirements currently imposed on a broker-dealer member with excess net capital of less than \$50,000 will no longer be applicable.

³ See SR-NSCC-97-9; Rel. No. 34-40081

Change in Standards of Financial Responsibility Applied to Banks and Trust Companies Using Non-guaranteed Services

Addendum B currently requires that banks and trust companies applying as Mutual Fund/Insurance Services members under Rule 2 have \$100,000 minimum excess capital over the capital requirement imposed by the applicable state or federal regulatory authority. Addendum I is silent on the criteria applicable to banks and trust companies applying as Fund Members under Rule 51.

Under the proposed rule change, the standards of financial responsibility applicable to banks and trust company applicants and members using Mutual Fund and Insurance Services at NSCC, will be applicable to both Mutual Fund/Insurance Services Members under Rule 2 and Fund Members under Rule 51 by inclusion in Addenda B and I.

Under the proposed standard, a bank or trust company will be required to have a Tier 1 risk-based capital ratio of at least 6% or greater or, with respect to a trust company which is not required to calculate a risk-based capital ratio for regulator purposes, to have at least \$2 million in capital.

As applied to banks, the revised criteria apply the standard adopted by the FDIC to compute risk-based capital ratios. The proposed standard of a minimum Tier 1

risk-based capital ratio of 6% is currently categorized as “well-capitalized” under the guidelines issued by the Board of Governors of the Federal Reserve System. All current NSCC Mutual Fund/Insurance Services Members and Fund Members that are banks currently exceed this requirement.

With respect to trust companies, the current standard of \$100,000 in excess capital over the capital required by applicable state or federal regulatory authorities will be replaced by a requirement that the trust company have \$2 million in capital, not excess capital. Since state regulators vary in their respective capital requirements and some states in fact do not have a capital requirement per se, the proposed criteria will provide a uniform and consistent standard to all trust companies, regardless of whether they are members of the Federal Reserve System or subject to nonuniform state regulatory requirements. The proposed \$2 million capital requirement is the same capital standard required for membership by The Depository Trust Company, an affiliate of NSCC which is also a clearing agency registered with the Commission under section 17(a) of the Act. Capital is generally defined as defined on the Consolidated Report of Condition (CALL Report).

Some trust companies which are not required to calculate a Tier 1 risk-based capital ratio pursuant to FDIC or Federal Reserve Act requirements nonetheless calculate this ratio for other regulatory purposes. NSCC will therefore accept as an alternative to the minimum \$2 million capital requirement the 6% Tier 1 risk-based

capital ratio, from those trust companies which provide this calculation for regulatory purposes.

NSCC currently has 66 bank/trust company members to which the revised capital requirement will apply, of which only one trust company has been identified as not meeting the new standard. With respect to trust companies which are current members, the proposed change will be effective two years from the date of Commission approval of this rule change. The purpose of delaying effectiveness is to allow the current member which does not meet the proposed standard sufficient time in which to obtain and apply additional capital, or to make alternate arrangements such as clearing through an NSCC member, without disruption to its business.

Miscellaneous Other Changes

Currently, an applicant for membership as a Mutual Fund/Insurance Services Member or full Member under Rule 2 is required to have an established business history of six months, while an applicant to be a Fund Member under Rule 51 is required to have an established business history of three years, subject in each case to the alternate provision that the applicant have sufficient operational background and personnel to ensure the firm's ability to conduct business. Addendum I is being amended to change the requisite period of time as applied to the prior business history to six months, consistent with the length of time required of applicants for the other types of membership.

As a related technical correction to Addendum B regarding the capital standards applicable to bank applicants for full membership under Rule 2 of NSCC's Rules, the footnote to Section I.B.2.(a)(i) Addendum B is amended to update the description of the methodology for calculating bank capital. This footnote uses old terminology regarding the components of capital. The footnote is amended to state that bank capital is defined as defined in a Consolidated Report of Condition, or a "CALL" report.

(b) NSCC's membership standards are intended to protect NSCC and its participants from undue risk while providing broad access to NSCC services. Since the proposed rule change relates to the standards of financial responsibility applicable to NSCC members using NSCC's Mutual Fund and Insurance Services, it will assist NSCC in assuring the safeguarding of funds and securities in NSCC's control or for which NSCC is responsible. It is therefore consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder applicable to NSCC.

4. Self-Regulatory Organization's Statement on Burden on Competition.

NSCC believes that the proposed rule change will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In the case of the few members not meeting the new criteria, NSCC will defer effectiveness for a reasonable period (two years) in order to permit such entities to

meet the revised criteria or make alternate arrangements without disruption of their business.

5. 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 Securities and Exchange Commission (the “Commission”) of any written comments received by NSCC.

6. Extension of Time Period for Commission Action.

NSCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2).

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.
- (d) Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission.

The proposed rule change is not based on a rule of another self-regulatory organization or of the Commission.

9. Exhibits.

Exhibit 1 - Notice of the proposed rule change for publication in the Federal Register.

Exhibit 2 - Letter to Michael Milone.

Exhibit 3 - N/A

Exhibit 4 - Marked copy of SR-NSCC-2003-22, showing changes from the original filing submitted on November 7, 2003.

Exhibit 5 - Proposed Rule Text

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. NSCC-2003-22)

SELF-REGULATORY ORGANIZATIONS

Amendment 1 to proposed rule change by NATIONAL SECURITIES CLEARING CORPORATION ("NSCC") consisting of modifications to NSCC's Rules. Comments requested within days after the date of this publication.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on , NSCC filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared 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 text of the proposed rule change is annexed hereto as Exhibit 5.

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 such statements.

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

(a) The proposed rule change amends Addenda B and I of NSCC's Rules to change the standards of financial responsibility required of applicants and members that are banks, trust companies and broker/dealers admitted as a Mutual Fund/Insurance Services Member under Rule 2, or as a Fund Member under Rule 51 of NSCC's Rules. Mutual Fund/Insurance Services Members and Fund Members are permitted to use NSCC's non-guaranteed services only.

The proposed revision (i) raises the minimum excess net capital requirement applicable to such broker/dealer applicants and members from \$25,000 in excess net capital, to \$50,000 in excess net capital; and (ii) changes the standards of financial responsibility required of banks and trust companies, by reference to different types of criteria than currently used for this purpose.

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Amendment of Addenda B and I and Appendix 1 with respect to Financial Criteria

Addendum B establishes financial criteria applicable to Mutual Fund/Insurance Services Members and applicants admitted under Rule 2 of NSCC's Rules;¹ Addendum I establishes the financial criteria applicable to Fund Members and applicants admitted under Rule 51 of NSCC's Rules².

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² Formerly, such members and applicants were also subject to supplemental terms applicable to Investment Fund transactions as set forth in Addendum V. Addendum V was eliminated pursuant to Commission approval of proposed rule change, SR-NSCC-2003-20, SEC Release No. 34-49598.

1(a)(8) of the '34 Act is required to maintain \$100,000 in excess net capital and a clearing broker is required to maintain \$1,000,000 in excess net capital)³. No change was made to the financial requirements applicable to use of non-guaranteed services at that time. NSCC now believes it is appropriate to do so.

NSCC currently has 290 broker/dealer members to which the increased net excess capital requirement will apply, of which 13 have been identified as not meeting the increased capital requirement. The purpose of delaying effectiveness is to allow current members which do not meet the proposed increased excess net capital requirement to have sufficient time in which to obtain and apply additional capital, or make alternate arrangements such as clearing through another NSCC member, without disruption to their business.

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

NSCC believes that the proposed rule change will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In the case of the few members not meeting the new criteria, NSCC will defer effectiveness for a reasonable period (two years) in order to permit such

entities to meet the revised criteria or make alternate arrangements without disruption of their business.

(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 Securities and Exchange Commission (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 rule filing, or
- (B) institute proceedings to determine whether the rule filing 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 N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within days after the date of this publication.

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

Jonathan G. Katz

Secretary

Dated:

EXHIBIT 2

November 29, 2004

Mr. Michael Milone
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, NW, Suite 5198
Mail Stop 2-2
Washington, DC 20549

Re: Amendment 1 to Proposed Rule Change SR-NSCC-2003-22

Dear Mr. Milone:

NSCC's proposed rule change SR-NSCC-2003-22, submitted to the Commission on November 7, 2003, amends Addendums B and I of NSCC's Rules to change the standards of financial responsibility required of applicants and members that are banks, trust companies and broker/dealers using NSCC's non-guaranteed services as a Mutual Fund/Insurance Services member under Rule 2, or as a Fund Member under Rule 51 of NSCC's Rules.

Consistent with our telephone conversations concerning this proposed rule change, this Amendment No. 1 amends the proposed rule change for general clarity and, in addition, to (i) include the rule text changes which implement the change in standards of financial responsibility required of banks and trusts, (ii) reference in the description of the proposed rule change the changes to the text of NSCC's regarding the required operational history applicable to Fund Member applicants under Addendum I; and (iii) change the definition of "capital" in a footnote to more accurately reference the methodology for calculating bank capital.

Very truly yours,

National Securities Clearing Corporation

By: /s/ Carol A. Jameson
Carol Jameson
Vice President and Senior Counsel

Enclosures

cc: Larry E. Bergmann
Senior Associate Director

Exhibit 4

**MARKED VERSION OF RULE FILING TO SHOW CHANGES TO THE TEXT FROM
THE FILING ORIGINALLY FILED AS SR-NSCC-2003-22 ON
NOVEMBER 7, 2003**

[Bracketed], ~~Strikethrough~~ indicates deleted text.
Underlined, **Bold** indicates new text.

[File No. ~~SR-NSCC-2003-22~~

~~Securities and Exchange Commission~~
~~Washington, D.C. 20549~~

Form 19b-4

~~Proposed Rule Change~~

By

~~NATIONAL SECURITIES CLEARING CORPORATION~~

~~Pursuant to Rule 19b-4 under the~~
~~Securities Exchange Act of 1934]~~

1. Text of Proposed Rule Change.

(a) The text of the proposed rule change is annexed hereto as Exhibit [A]

5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization.

(a) The proposed rule change has been approved by the Board of Directors of NSCC.

~~[(b) Contact regarding questions and comments:~~

~~— Carol A. Jameson — (212) 855-3213]~~

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) The proposed rule change amends Addenda~~[ums]~~ B and I of NSCC's Rules to change the standards of financial responsibility required of applicants and members that are banks, trust companies and broker/dealers [~~using certain of NSCC's non-guaranteed services (i.e.,]~~ **admitted** as a Mutual Fund/Insurance Services Member under Rule 2, or as a Fund Member under Rule 51 of NSCC's Rules~~].~~ **Mutual Fund/Insurance Services Members and Fund Members are permitted to use NSCC's non-guaranteed services only.**

The proposed revision (i) raises the minimum excess net capital requirement applicable to such broker/dealer applicants and members ~~[using certain non-guaranteed services]~~ from \$25,000 in excess net capital, to \$50,000 in excess net capital; and (ii) changes the standards of financial responsibility required of banks and trust companies, by reference to different types of criteria than currently used for this purpose. The effective date for the change as applied to current members will be two years from the date of Commission approval of this rule change. **The proposed rule change also changes the established business history required of an applicant to become a Fund Member from three years to six months.**

Amendment of Addenda~~ums~~ B and I and Appendix 1 with respect to Financial Criteria

Addendum B establishes financial criteria applicable to Mutual Fund/Insurance Services Members and applicants admitted under Rule[s] 2 of NSCC's Rules;¹ Addendum I establishes the financial criteria applicable to Fund Members and applicants admitted under Rule 51 of NSCC's Rules² ~~[, subject in each case to the supplemental terms applicable to Investment Fund transactions processing by such members as set forth in Addendum V²].~~

¹ NSCC has revised Addendum B (Version 1) as set forth in Appendix 1 to NSCC's Rules (Version 2 of Addendum B). NSCC is informing members on a rolling basis when Version 2 is applicable to them. The provisions of Addendum B which are the subject of this proposed rule change are identical in Version 1 and Version 2. This proposed rule change therefore will amend both the text of Addendum B (Version 1) and Appendix 1 (Version 2 of Addendum B).

² ~~[NSCC proposes the elimination of Addendum V in proposed rule change, SR-NSCC-2003-20.]~~ Formerly, such members and applicants were also subject to supplemental terms applicable to Investment Fund transactions as set forth in Addendum V. Addendum V was eliminated pursuant to Commission approval of proposed rule change, SR-NSCC-2003-20, SEC Release No. 34-49598.

Increase of Minimum Excess Net Capital Required of Broker-Dealers Using Non-guaranteed Services

NSCC's current minimum excess net capital requirement applicable to broker-dealer applicants and members using non-guaranteed services was implemented in 1993. In 1998, NSCC increased its minimum excess net capital requirements applicable to broker/dealer applicants and members under Rule 2 using guaranteed services of NSCC from \$50,000 to \$500,000, subject to certain limited exceptions (i.e., a municipal securities brokers broker under Rule 15c3-1(a)(8) of the '34 Act is required to maintain \$100,000 in excess net capital and a clearing broker is required to maintain \$1,000,000 in excess net capital)³. No change was made to the financial requirements applicable to use of non-guaranteed services at that time. NSCC now believes it is appropriate to do so.

NSCC currently has 290 broker/dealer members to which the increased net excess capital requirement will apply, of which 13 have been identified as not meeting the increased capital requirement. The purpose of delaying effectiveness is to allow current members which do not meet the proposed increased excess net capital requirement to have sufficient time in which to obtain and apply additional capital, or make alternate arrangements such as clearing through another NSCC member, without disruption to their business.

³ See SR-NSCC-97-9; Rel. No. 34-40081

NSCC currently requires a larger clearing fund deposit from broker/dealer members which have a minimum excess net capital of less than \$50,000 (i.e., a minimum of \$10,000 - \$20,000 - \$40,000, as compared to \$5,000 - \$10,000 - \$20,000, depending upon settlement debit history). When the proposed [~~increase in the~~] minimum excess net capital requirement [~~becomes effective~~] **is increased to \$50,000**, the higher minimum clearing fund requirements currently imposed on a [~~minimally capitalized broker-dealer member will be eliminated~~] **broker-dealer member with excess net capital of less than \$50,000 will no longer be applicable**.

Change in Standards of Financial Responsibility Applied to Banks and Trust Companies Using Non-guaranteed Services

Addendum B currently requires that banks and trust companies applying as Mutual Fund/Insurance Services members under Rule 2 have \$100,000 minimum excess capital over the capital requirement imposed by the applicable state or federal regulatory authority. Addendum I is silent on the criteria applicable to banks and trust companies applying as Fund Members under Rule 51.

Under the proposed rule change [~~NSCC will establish one uniform~~], **the standards** of financial responsibility applicable to banks and trust company applicants and members using Mutual Fund and Insurance Services at NSCC, [~~whether in the capacity as a~~] **will be applicable to both** Mutual Fund/Insurance Services Members under Rule 2 [~~or as a~~] and Fund Members under Rule 51 **by inclusion in Addenda B and I.**

Under the proposed [~~uniform~~] standard, a bank [~~that accepts deposits~~] **or trust company** will be required to have a Tier 1 risk-based capital ratio of at least 6% or greater[.] **or, with respect to a** [A]trust company [~~will be required to either (i) have a Tier 1 capital ratio of 6% or greater; or (ii)~~] **which is not required to calculate a risk-based capital ratio for regulator purposes, to** have at least \$2 million in capital.

As applied to banks, the revised criteria apply the standard adopted by the FDIC to compute risk-based capital ratios. The proposed standard of a minimum Tier 1 risk-based capital ratio of 6% is currently categorized as “well-capitalized” under the guidelines issued by the Board of Governors of the Federal Reserve System. All **current** NSCC Mutual Fund/Insurance Services Members and Fund Members [which] **that** are banks [~~that would be subject to this proposed criteria~~] currently exceed this requirement.

With respect to trust companies, **the current standard of \$100,000 in excess capital over the capital required by applicable state or federal regulatory authorities will be replaced by a requirement that the trust company have \$2 million in capital, not excess capital. Since state regulators vary in their respective capital requirements and some states in fact do not have a capital requirement per se,** the proposed criteria will provide a uniform and consistent standard to all trust companies, regardless of whether they are members of the Federal Reserve System or subject to nonuniform state regulatory requirements. The **proposed** \$2 million capital requirement is the same capital standard required for membership by The Depository Trust Company, an affiliate of NSCC which is also a clearing agency registered with the Commission under section 17(a) of the Act. **Capital is generally defined as defined on the Consolidated Report of Condition (CALL Report).**

Some trust companies which are not required to calculate a Tier 1 risk-based capital ratio pursuant to FDIC or Federal Reserve Act requirements nonetheless calculate this ratio for other **regulatory** purposes. NSCC will therefore accept as an alternative to the minimum **\$2 million** capital requirement the 6% Tier 1 risk-based capital ratio, from those trust companies which provide this calculation **for regulatory purposes**.

NSCC currently has 66 bank/trust company members to which the revised capital requirement will apply, of which only one trust company has been identified as not meeting the new standard. With respect to trust companies which are current members, the proposed change will be effective two years from the date of Commission approval of this rule change. The purpose of delaying effectiveness is to allow the current member which does not meet the proposed standard sufficient time in which to obtain and apply additional capital, or to make alternate arrangements such as clearing through an NSCC member, without disruption to its business.

Miscellaneous Other Changes

Currently, an applicant for membership as a Mutual Fund/Insurance Services Member or full Member under Rule 2 is required to have an established business history of six months, while an applicant to be a Fund Member under Rule 51 is required to have an established business history of three years, subject in each case to the alternate provision that the applicant have sufficient operational background and personnel to ensure the firm's ability to conduct business. Addendum I is being amended to change the

requisite period of time as applied to the prior business history to six months, consistent with the length of time required of applicants for the other types of membership.

As a related technical correction to Addendum B regarding the capital standards applicable to bank applicants for full membership under Rule 2 of NSCC's Rules, the footnote to Section I.B.2.(a)(i) Addendum B is amended to update the description of the methodology for calculating bank capital. This footnote uses old terminology regarding the components of capital. The footnote is amended to state that bank capital is defined as defined in a Consolidated Report of Condition, or a "CALL" report.

(b) NSCC's membership standards are intended to protect NSCC and its participants from undue risk while providing broad access to NSCC services. Since the proposed rule change relates to the standards of financial responsibility applicable to NSCC members using NSCC's Mutual Fund and Insurance Services, it will assist NSCC in assuring the safeguarding of funds and securities in NSCC's control or for which NSCC is responsible. It is therefore consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder applicable to NSCC.

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

NSCC believes that the proposed rule change will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In the case of the few members not meeting the new criteria, NSCC will defer effectiveness for a reasonable period (two years) in order to permit such entities to meet the revised criteria or make alternate arrangements without disruption of their business.

5. 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 Securities and Exchange Commission (the "Commission") of any written comments received by NSCC.

6. Extension of Time Period for Commission Action.

NSCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2).

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission.

The proposed rule change is not based on a rule of another self-regulatory organization or of the Commission.

9. Exhibits.

~~[Exhibit A - Text of the proposed rule change.~~

~~Exhibit B]~~

Exhibit 1 - Notice of the proposed rule change for publication in the Federal Register.

Exhibit 2 - Letter to Michael Milone.

Exhibit 3 - N/A

Exhibit 4 - Marked copy of SR-NSCC-2003-22, showing changes from the original filing submitted on November 7, 2003.

Exhibit 5 - Proposed Rule Text

[SIGNATURES

~~Pursuant to the requirements of the Securities Exchange Act of 1934, the self-regulatory organization has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.~~

~~NATIONAL SECURITIES CLEARING CORPORATION~~

~~By: /s/ Karen L. Saperstein _____~~

~~Karen L. Saperstein~~

~~_____ Managing Director, General Counsel and Secretary]~~

Underlined, boldface text indicates additions to NSCC's Rules.
~~[Bracketed, strikethrough]~~ text indicates deletions to NSCC's Rules.

Modify NSCC's Rules as follows:

Section 1.B.2.(a)(i) of Addendum B (Version 1) and
Section 1.B.2.(a)(i) of Addendum B (contained in Appendix 1) are amended as follows:

2. Bank applicants, other than applicants for Settling Bank Only Membership shall:

a.(i) have at least \$50 million in capital;¹ or

¹For the purpose of the membership standards and surveillance status rules applicable to banks, "capital" is defined ~~[to include capital stock, surplus, undivided net profits, reserve for contingencies and other capital reserves]~~ **as defined on the Consolidated Report of Condition ("CALL" report)**.

* * *

Section 1.B.4 of Addendum B (Version 1) and Section 1.B.4 of Addendum B (contained in Appendix 1) are amended as follows:

4. All applicants for membership limited to the use of the Mutual Fund Services and/or the Insurance Processing Service shall meet the following:
- a. If a broker/dealer:
- (i) have ~~ve[s]~~ **\$50,000** in excess net capital over the minimum net capital requirement imposed by the SEC or such higher minimum capital requirement imposed by the broker/dealer's designated examining authority, and,
- (ii) the standards in (I) (B) (1) (b) and (c) set forth above.

b. If a ~~[T]~~**[B]** bank or ~~[T]~~**[B]** trust company:

- (i) **have a Tier 1 risk-based capital ratio of 6% or greater or, with respect to trust companies which do not calculate a Tier 1 risk-based capital ratio, have at least \$2 million in capital,** ~~[s \$100,000 minimum excess capital over the capital requirement imposed by its state or federal regulatory authority]~~ and,

(ii) the standard set forth in (1)(B)(2)(b) above.

* * *

Section I of Addendum I is amended as follows:

ADDENDUM I

STANDARDS OF FINANCIAL RESPONSIBILITY AND OPERATIONAL CAPABILITY FOR FUND MEMBERS

The Corporation shall apply the following standards in determining the financial responsibility and operational capability of Fund Members and Fund Member applicants.

I. Fund Member Standards

- A. In addition to the requirements established pursuant to the provisions of Rule 51, a Fund Member applicant shall:
- (1) have sufficient financial ability to meet obligations to the Corporation;
 - (2) have an established business history of a minimum of [~~three years~~] **six months** or personnel with sufficient operational background and experience to ensure the ability of the Fund Member to conduct such a business;
 - (3) have adequate personnel capable of handling mutual fund transactions with the Corporation and adequate physical facilities, books and records and procedures to fulfill anticipated commitments to and meet the operational requirements of the Corporation and Settling Members with necessary promptness and accuracy and to conform to any condition and requirement which the Corporation reasonably deems necessary for its protection or that of its Settling Members;
 - (4) not be known to be subject to any Statutory Disqualification or an order of similar effect issued by a Court or agency of competent jurisdiction or, with respect to an Insurance Company, be in good standing in those states in which it is licensed as an insurance company and in its state of organization; and
 - (5) not be known to be subject to any other action or condition the existence of which would require the applicant to be placed on surveillance by the Corporation.

B. In addition to the foregoing standards,

(1) Broker/dealer Fund/Serv applicants shall:

a. ~~[(i) have \$25,000 in excess net capital over the minimum net capital requirement imposed by the Securities and Exchange Commission or such higher requirement imposed by the broker/dealer's designated examining authority, and aggregate assets under management for all investment companies registered under the Investment Company Act of 1940 for whom it distributes shares shall be at least \$500,000; or~~

~~(ii)] have \$50,000 in excess net capital over the minimum net capital requirement imposed by the Securities and Exchange Commission or such higher requirement imposed by the broker/dealer's designated examining authority; and,~~

b. not be subject to reporting under Rule 17(a)(11) of the Securities and Exchange Commission; and

c. not be known to be on a "closer-than-normal" surveillance by the applicant's designated examining authority as that term is defined by the applicant's designated examining authority.

(2) A Fund Member applicant that is an Investment Company registered under the Investment Company Act of 1940 shall have a minimum of \$100,000 in assets under management.

(3) A Fund Member applicant that is an Investment Adviser registered under the Investment Advisers Act of 1940 shall have a minimum of \$25,000,000 in assets under management and \$100,000 in total net worth.

(4) **A Fund Member applicant that is a bank or trust company must have a Tier 1 risk-based capital ratio of 6% or greater or, with respect to trust companies that do not calculate a Tier 1 risk-based capital ratio, have at least \$2 million in capital.**

~~(4)~~⁵ All other applicants shall be required to meet financial stability and operational capability standards as are applicable to the industry in which the applicant is associated.

* * *

Procedure XV, Section A.I.(b) of NSCC's Rules and Procedures is amended as follows:

A.I.(b) Clearing Fund Formula for Mutual Fund/Insurance Services Members who use the Mutual Fund Services².

Each Mutual Fund/Insurance Services Member is required to contribute to the Clearing Fund maintained by the Corporation an amount, in cash, approximately equal to:

(i) If accepted for membership pursuant to Standards of Financial Responsibility and Operational Capability Section (I)(B)(1), (2), (4) or (5):

(1) \$5,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$100,000 with respect to any one Fund Member, or

(2) \$10,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$500,000 with respect to any one Fund Member, or

(3) \$20,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of more than \$500,000 with respect to any one Fund Member.

~~[(ii) If accepted for membership pursuant to Standards of Financial Responsibility and Operational Capability Section (I)(B)(4)(a) or (b):~~

~~(1) \$10,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$100,000 with respect to any one Fund Member, or~~

~~(2) \$20,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$500,000 with respect to any one Fund Member, or~~

~~(3) \$40,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of more than \$500,000 with respect to any one Fund Member.]~~

²NOTE: This section A.I.(b) applies to entities whose use of the Corporation's services are restricted to the Mutual Fund Services and/or the Insurance Processing Service. Entities which use or are permitted to use Services other than or in addition to the Mutual Fund Services and Insurance Processing Service are covered by section A.I.(a) or A.II.

* * *

Appendix 1, Version 2 of Procedure XV and Addendum B, Section I.(C) of NSCC's Rules and Procedures is amended as follows:

I.(C) Clearing Fund Formula for Mutual Fund/Insurance Services Members who use the Mutual Fund Services.⁶

Each Mutual Fund/Insurance Services Member is required to contribute to the Clearing Fund maintained by the Corporation an amount, in cash, approximately equal to:

(1) If accepted for membership pursuant to Addendum B (Standards of Financial Responsibility and Operational Capability), Section (I)(B)(1), (2), (4)[(e)] or (5):

(a) \$5,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$100,000 with respect to any one Fund Member;

or

(b) \$10,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$500,000 with respect to any one Fund Member;

or

(c) \$20,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of more than \$500,000 with respect to any one Fund Member.

~~[(2) If accepted for membership pursuant to Addendum B (Standards of Financial Responsibility and Operational Capability) Section (I)(B)(4)(a) or (b):~~

~~(a) \$10,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$100,000 with respect to any one Fund Member;~~

~~or~~

~~(b) \$20,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$500,000 with respect to any one Fund Member;~~

or

~~(c) \$40,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of more than \$500,000 with respect to any one Fund Member.]~~

⁶ This section applies to entities whose use of the Corporation's services are restricted to the Mutual Fund and/or the Insurance Processing Services. Entities which use or are permitted to use Services other than or in addition to the Mutual Fund Services and Insurance Processing Service are covered by section 1.(A).

[Bracketed], ~~Strikethrough~~ indicates deleted text.
Underlined, **Bold** indicates new text.

EXHIBIT [B]1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. NSCC-2003-22)

SELF-REGULATORY ORGANIZATIONS

Amendment 1 to p[P]roposed rule change by NATIONAL SECURITIES CLEARING CORPORATION ("NSCC") consisting of modifications to NSCC's Rules. Comments requested within ____ days after the date of this publication.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on _____, NSCC filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared 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 text of the proposed rule change is [~~set forth on Exhibit A and consists of changes to NSCC's Rules and Procedures~~] **annexed hereto as Exhibit 5.**

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 such statements.

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

(a) The proposed rule change amends Addenda ~~a~~ B and I of NSCC's Rules to change the standards of financial responsibility required of applicants and members that are banks, trust companies and broker/dealers ~~[using certain of NSCC's non-guaranteed services (i.e.,]~~ **admitted** as a Mutual Fund/Insurance Services Member under Rule 2, or as a Fund Member under Rule 51 of NSCC's Rules~~].~~ **Mutual Fund/Insurance Services Members and Fund Members are permitted to use NSCC's non-guaranteed services only.**

The proposed revision (i) raises the minimum excess net capital requirement applicable to such broker/dealer applicants and members ~~[using certain non-guaranteed services]~~ from \$25,000 in excess net capital, to \$50,000 in excess

net capital; and (ii) changes the standards of financial responsibility required of banks and trust companies, by reference to different types of criteria than currently used for this purpose. The effective date for the change as applied to current members will be two years from the date of Commission approval of this rule change. **The proposed rule change also changes the established business history required of an applicant to become a Fund Member from three years to six months.**

Amendment of Addenda[ums] B and I and Appendix 1 with respect to Financial Criteria

Addendum B establishes financial criteria applicable to Mutual Fund/Insurance Services Members and applicants admitted under Rule[s] 2 of NSCC's Rules;⁴ Addendum I establishes the financial criteria applicable to Fund Members and applicants admitted under Rule 51 of NSCC's Rules⁵ [~~subject in each case to the supplemental terms applicable to Investment Fund transactions processing by such members as set forth in Addendum V²].~~

⁴ NSCC has revised Addendum B (Version 1) as set forth in Appendix 1 to NSCC's Rules (Version 2 of Addendum B). NSCC is informing members on a rolling basis when Version 2 is applicable to them. The provisions of Addendum B which are the subject of this proposed rule change are identical in Version 1 and Version 2. This proposed rule change therefore will amend both the text of Addendum B (Version 1) and Appendix 1 (Version 2 of Addendum B).

⁵ [~~NSCC proposes the elimination of Addendum V in proposed rule change, SR-NSCC-2003-20.~~]Formerly, such members and applicants were also subject to supplemental terms applicable to Investment Fund transactions as set forth in Addendum V. Addendum V was eliminated pursuant to Commission approval of proposed rule change, SR-NSCC-2003-20, SEC Release No. 34-49598.

Increase of Minimum Excess Net Capital Required of Broker-Dealers Using Non-guaranteed Services

NSCC's current minimum excess net capital requirement applicable to broker-dealer applicants and members using non-guaranteed services was implemented in 1993. In 1998, NSCC increased its minimum excess net capital requirements applicable to broker/dealer applicants and members under Rule 2 using guaranteed services of NSCC from \$50,000 to \$500,000, subject to certain limited exceptions (i.e., a municipal securities brokers broker under Rule 15c3-1(a)(8) of the '34 Act is required to maintain \$100,000 in excess net capital and a clearing broker is required to maintain \$1,000,000 in excess net capital)⁶. No change was made to the financial requirements applicable to use of non-guaranteed services at that time. NSCC now believes it is appropriate to do so.

NSCC currently has 290 broker/dealer members to which the increased net excess capital requirement will apply, of which 13 have been identified as not meeting the increased capital requirement. The purpose of delaying effectiveness is to allow current members which do not meet the proposed increased excess net capital requirement to have sufficient time in which to obtain and apply additional capital, or make alternate arrangements such as clearing through another NSCC member, without disruption to their business.

⁶ See SR-NSCC-97-9; Rel. No. 34-40081

NSCC currently requires a larger clearing fund deposit from broker/dealer members which have a minimum excess net capital of less than \$50,000 (i.e., a minimum of \$10,000 - \$20,000 - \$40,000, as compared to \$5,000 - \$10,000 - \$20,000, depending upon settlement debit history). When the proposed [~~increase in the~~] minimum excess net capital requirement [~~becomes effective~~] **is increased to \$50,000**, the higher minimum clearing fund requirements currently imposed on a [~~minimally capitalized broker-dealer member will be eliminated~~] **broker-dealer member with excess net capital of less than \$50,000 will no longer be applicable**.

Change in Standards of Financial Responsibility Applied to Banks and Trust Companies Using Non-guaranteed Services

Addendum B currently requires that banks and trust companies applying as Mutual Fund/Insurance Services members under Rule 2 have \$100,000 minimum excess capital over the capital requirement imposed by the applicable state or federal regulatory authority. Addendum I is silent on the criteria applicable to banks and trust companies applying as Fund Members under Rule 51.

Under the proposed rule change [~~NSCC will establish one uniform~~], **the standards** of financial responsibility applicable to banks and trust company applicants and members using Mutual Fund and Insurance Services at NSCC, [~~whether in the capacity as a~~] **will be applicable to both** Mutual Fund/Insurance Services Members

under Rule 2 [~~or as a~~] and Fund Members under Rule 51 **by inclusion in Addenda B and I.**

Under the proposed [~~uniform~~] standard, a bank [~~that accepts deposits~~] **or trust company** will be required to have a Tier 1 risk-based capital ratio of at least 6% or greater[.] **or, with respect to a** [A]trust company [~~will be required to either (i) have a Tier 1 capital ratio of 6% or greater; or (ii)~~] **which is not required to calculate a risk-based capital ratio for regulator purposes, to** have at least \$2 million in capital.

As applied to banks, the revised criteria apply the standard adopted by the FDIC to compute risk-based capital ratios. The proposed standard of a minimum Tier 1 risk-based capital ratio of 6% is currently categorized as “well-capitalized” under the guidelines issued by the Board of Governors of the Federal Reserve System. All **current** NSCC Mutual Fund/Insurance Services Members and Fund Members [~~which~~] **that** are banks [~~that would be subject to this proposed criteria~~] currently exceed this requirement.

With respect to trust companies, **the current standard of \$100,000 in excess capital over the capital required by applicable state or federal regulatory authorities will be replaced by a requirement that the trust company have \$2 million in capital, not excess capital. Since state regulators vary in their respective capital requirements and some states in fact do not have a**

capital requirement per se, the proposed criteria will provide a uniform and consistent standard to all trust companies, regardless of whether they are members of the Federal Reserve System or subject to nonuniform state regulatory requirements. The **proposed** \$2 million capital requirement is the same capital standard required for membership by The Depository Trust Company, an affiliate of NSCC which is also a clearing agency registered with the Commission under section 17(a) of the Act. **Capital is generally defined as defined on the Consolidated Report of Condition (CALL Report).**

Some trust companies which are not required to calculate a Tier 1 risk-based capital ratio pursuant to FDIC or Federal Reserve Act requirements nonetheless calculate this ratio for other **regulatory** purposes. NSCC will therefore accept as an alternative to the minimum **\$2 million** capital requirement the 6% Tier 1 risk-based capital ratio, from those trust companies which provide this calculation **for regulatory purposes.**

NSCC currently has 66 bank/trust company members to which the revised capital requirement will apply, of which only one trust company has been identified as not meeting the new standard. With respect to trust companies which are current members, the proposed change will be effective two years from the date of Commission approval of this rule change. The purpose of delaying effectiveness is to allow the current member which does not meet the proposed standard sufficient time in which to obtain and apply additional capital, or to make alternate arrangements such as clearing through an NSCC member, without disruption to its business.

Miscellaneous Other Changes

Currently, an applicant for membership as a Mutual Fund/Insurance Services Member or full Member under Rule 2 is required to have an established business history of six months, while an applicant to be a Fund Member under Rule 51 is required to have an established business history of three years, subject in each case to the alternate provision that the applicant have sufficient operational background and personnel to ensure the firm's ability to conduct business. Addendum I is being amended to change the requisite period of time as applied to the prior business history to six months, consistent with the length of time required of applicants for the other types of membership.

As a related technical correction to Addendum B regarding the capital standards applicable to bank applicants for full membership under Rule 2 of NSCC's Rules, the footnote to Section I.B.2.(a)(i) Addendum B is amended to update the description of the methodology for calculating bank capital. This footnote uses old terminology regarding the components of capital. The footnote is amended to state that bank capital is defined as defined in a Consolidated Report of Condition, or a "CALL" report.

(b) NSCC's membership standards are intended to protect NSCC and its participants from undue risk while providing broad access to NSCC services. Since the proposed rule change relates to the standards of financial responsibility

applicable to NSCC members using NSCC's Mutual Fund and Insurance Services, it will assist NSCC in assuring the safeguarding of funds and securities in NSCC's control or for which NSCC is responsible. It is therefore consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder applicable to NSCC.

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

NSCC believes that the proposed rule change will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In the case of the few members not meeting the new criteria, NSCC will defer effectiveness for a reasonable period (two years) in order to permit such entities to meet the revised criteria or make alternate arrangements without disruption of their business.

(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 Securities and Exchange Commission (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 rule filing, or
- (B) institute proceedings to determine whether the rule filing 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 N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within days after the date of this publication.

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

Jonathan G. Katz

Secretary

Dated:

Exhibit 5

Underlined, boldface text indicates additions to NSCC's Rules.

~~[Bracketed, strikethrough]~~ text indicates deletions to NSCC's Rules.

Modify NSCC's Rules as follows:

Section 1.B.2.(a)(i) of Addendum B (Version 1) and

Section 1.B.2.(a)(i) of Addendum B (contained in Appendix 1) are amended as follows:

2. Bank applicants, other than applicants for Settling Bank Only Membership shall:

a.(i) have at least \$50 million in capital;¹ or

¹For the purpose of the membership standards and surveillance status rules applicable to banks, "capital" is defined ~~[to include capital stock, surplus, undivided net profits, reserve for contingencies and other capital reserves.]~~ **as defined on the Consolidated Report of Condition ("CALL" report)**.

* * *

Section 1.B.4 of Addendum B (Version 1) and Section 1.B.4 of Addendum B (contained in Appendix 1) are amended as follows:

4. All applicants for membership limited to the use of the Mutual Fund Services and/or the Insurance Processing Service shall meet the following:
- a. If a broker/dealer:
- (i) ~~have~~ have ~~[s] \$[25]~~**50,000** in excess net capital over the minimum net capital requirement imposed by the SEC or such higher minimum capital requirement imposed by the broker/dealer's designated examining authority, and,
- (ii) the standards in (I) (B) (1) (b) and (c) set forth above.
- b. If a ~~[B]~~**bank** or ~~[T]~~**trust** company:
- (i) **have a Tier 1 risk-based capital ratio of 6% or greater or, with respect to trust companies which do not calculate a Tier 1 risk-based capital ratio, have at least \$2 million in capital.**~~[s \$100,000 minimum excess capital over the capital requirement imposed by its state or federal regulatory authority]~~ and,

(ii) the standard set forth in (1)(B)(2)(b) above.

* * *

Section I of Addendum I is amended as follows:

ADDENDUM I

STANDARDS OF FINANCIAL RESPONSIBILITY AND OPERATIONAL CAPABILITY FOR FUND MEMBERS

The Corporation shall apply the following standards in determining the financial responsibility and operational capability of Fund Members and Fund Member applicants.

I. Fund Member Standards

- A. In addition to the requirements established pursuant to the provisions of Rule 51, a Fund Member applicant shall:
- (1) have sufficient financial ability to meet obligations to the Corporation;
 - (2) have an established business history of a minimum of [~~three years~~] **six months** or personnel with sufficient operational background and experience to ensure the ability of the Fund Member to conduct such a business;
 - (3) have adequate personnel capable of handling mutual fund transactions with the Corporation and adequate physical facilities, books and records and procedures to fulfill anticipated commitments to and meet the operational requirements of the Corporation and Settling Members with necessary promptness and accuracy and to conform to any condition and requirement which the Corporation reasonably deems necessary for its protection or that of its Settling Members;
 - (4) not be known to be subject to any Statutory Disqualification or an order of similar effect issued by a Court or agency of competent jurisdiction or, with respect to an Insurance Company, be in good standing in those states in which it is licensed as an insurance company and in its state of organization; and
 - (5) not be known to be subject to any other action or condition the existence of which would require the applicant to be placed on surveillance by the Corporation.

B. In addition to the foregoing standards,

(1) Broker/dealer Fund/Serv applicants shall:

a. [~~(i) have \$25,000 in excess net capital over the minimum net capital requirement imposed by the Securities and Exchange Commission or such higher requirement imposed by the broker/dealer's designated examining authority, and aggregate assets under management for all investment companies registered under the Investment Company Act of 1940 for whom it distributes shares shall be at least \$500,000; or~~

~~(ii)] have \$50,000 in excess net capital over the minimum net capital requirement imposed by the Securities and Exchange Commission or such higher requirement imposed by the broker/dealer's designated examining authority; and,~~

b. not be subject to reporting under Rule 17(a)(11) of the Securities and Exchange Commission; and

c. not be known to be on a "closer-than-normal" surveillance by the applicant's designated examining authority as that term is defined by the applicant's designated examining authority.

(2) A Fund Member applicant that is an Investment Company registered under the Investment Company Act of 1940 shall have a minimum of \$100,000 in assets under management.

(3) A Fund Member applicant that is an Investment Adviser registered under the Investment Advisers Act of 1940 shall have a minimum of \$25,000,000 in assets under management and \$100,000 in total net worth.

(4) **A Fund Member applicant that is a bank or trust company must have a Tier 1 risk-based capital ratio of 6% or greater or, with respect to trust companies that do not calculate a Tier 1 risk-based capital ratio, have at least \$2 million in capital.**

([4]5) All other applicants shall be required to meet financial stability and operational capability standards as are applicable to the industry in which the applicant is associated.

* * *

Procedure XV, Section A.I.(b) of NSCC's Rules and Procedures is amended as follows:

A.I.(b) Clearing Fund Formula for Mutual Fund/Insurance Services Members who use the Mutual Fund Services².

Each Mutual Fund/Insurance Services Member is required to contribute to the Clearing Fund maintained by the Corporation an amount, in cash, approximately equal to:

(i) If accepted for membership pursuant to Standards of Financial Responsibility and Operational Capability Section (I)(B)(1), (2), (4) or (5):

(1) \$5,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$100,000 with respect to any one Fund Member, or

(2) \$10,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$500,000 with respect to any one Fund Member, or

(3) \$20,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of more than \$500,000 with respect to any one Fund Member.

~~[(ii) If accepted for membership pursuant to Standards of Financial Responsibility and Operational Capability Section (I)(B)(4)(a) or (b):~~

~~(1) \$10,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$100,000 with respect to any one Fund Member, or~~

~~(2) \$20,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$500,000 with respect to any one Fund Member, or~~

~~(3) \$40,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of more than \$500,000 with respect to any one Fund Member.]~~

²NOTE: This section A.I.(b) applies to entities whose use of the Corporation's services are restricted to the Mutual Fund Services and/or the Insurance Processing Service. Entities which use or are permitted to use Services other than or in addition to the Mutual Fund Services and Insurance Processing Service are covered by section A.I.(a) or A.II.

* * *

Appendix 1, Version 2 of Procedure XV and Addendum B, Section I.(C) of NSCC's Rules and Procedures is amended as follows:

I.(C) Clearing Fund Formula for Mutual Fund/Insurance Services Members who use the Mutual Fund Services.⁶

Each Mutual Fund/Insurance Services Member is required to contribute to the Clearing Fund maintained by the Corporation an amount, in cash, approximately equal to:

(1) If accepted for membership pursuant to Addendum B (Standards of Financial Responsibility and Operational Capability), Section (I)(B)(1), (2), (4)[(e)] or (5):

(a) \$5,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$100,000 with respect to any one Fund Member;

or

(b) \$10,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$500,000 with respect to any one Fund Member;

or

(c) \$20,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of more than \$500,000 with respect to any one Fund Member.

~~[(2) If accepted for membership pursuant to Addendum B (Standards of Financial Responsibility and Operational Capability) Section (I)(B)(4)(a) or (b):~~

~~(a) \$10,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$100,000 with respect to any one Fund Member;~~

~~or~~

~~(b) \$20,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of no more than \$500,000 with respect to any one Fund Member;~~

or

~~(c) \$40,000 if the Mutual Fund/Insurance Services Member has daily Mutual Fund Services settlement debits of more than \$500,000 with respect to any one Fund Member.]~~

⁶ This section applies to entities whose use of the Corporation's services are restricted to the Mutual Fund and/or the Insurance Processing Services. Entities which use or are permitted to use Services other than or in addition to the Mutual Fund Services and Insurance Processing Service are covered by section 1.(A).