that transactions under the exemption be documented as swaps may be satisfied by the use of ISDA master agreements, individually tailored agreements negotiated between specific counterparties that contain terms that are substantially equivalent to those terms contained in the ISDA master agreements, or non-U.S. master agreements developed specifically for documenting transactions effected in foreign domestic markets. Conventional option agreements or conventional forward agreements that are documented using ISDA master agreements or other forms of agreement are not included within the scope of this exemption.

Questions also have arisen regarding the requirement that swap agreements covered by this exemption satisfy the terms of the exemption in the Part 35 Rules. Specifically, questions have arisen whether swap agreements covered by this exemption also must be exempt under the Part 35 Rules. The Commission's intention in requiring that transactions eligible for the exemption satisfy the Part 35 Rules was to ensure that the exemption be available only to swap agreements that meet the terms and conditions set forth in the Part 35 Rules, specifically in Part 35.2 (17 CFR 35.2). Therefore, it is not necessary that swap agreements subject to the exemption also be exempt under the Part 35 Rules: rather, such swap agreements must satisfy the specified criteria set forth in the Part 35 Rules.

C. Public Interest

The Commission finds that extending the exemption is consistent with the public interest and the protection of investors. When used properly, OTC derivative instruments provide significant benefits to corporations, financial institutions, and institutional investors in managing the risks of their business exposures or financial assets. Derivatives also permit investors to lower their funding costs and, in many instances, can be a cheaper and more liquid way of attaining desired exposure than a position in the cast market. This exemption is intended to reduce or eliminate any legal risk arising from conducting certain OTC derivatives transactions in unregistered brokerdealers, and thus to reduce any financial risk within the securities markets. Legal certainty contributes to the preservation of the financial integrity and stability of OTC derivatives markets.

D. Effective Date; Future Regulatory Action

The exemption being extended by this order is retroactive and effective as of

June 6, 1934, the date of the enactment of the Exchange Act, and will expire September 30, 1996. The Commission staff will continue its review of the OTC derivatives activities of U.S. brokerdealers and their affiliates, and prior to September 30, 1996, the Commission will consider whether to modify, condition, extend, or withdraw the exemption in whole or in part. Furthermore, this exemption is subject to modification or revocation at any time the Commission determines that such modification or revocation is consistent with the public interest or the protection of investors.⁵

It is therefore ordered, pursuant to Section 15(a)(2) of the Exchange Act, that to the extent brokers or dealers engage in transactions involving individually negotiated, cash-settled OTC options on debt securities or groups or indexes of such securities that (1) are documented as swap agreements, and (2) satisfy the terms of the exemption from regulation under the Commodity Exchange Act adopted by the Commodity Futures Trading Commission, which is set forth at 17 CFR Part 35, to the extent such instruments are securities, such brokers and dealers are exempt from the registration requirements of Section 15(a)(1) of the Exchange Act.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–24097 Filed 9–27–95; 8:45 am]

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 $^{5}\,\mbox{The}$ extension of the exemption is intended to avoid any dislocation of existing OTC derivatives markets and to allow those broker-dealers who have not already done so time to move existing business covered by this exemption into entities that do not rely on this exemption. The extension of the exemption is not intended to permit registered broker-dealers conducting transactions in cashsettled OTC options on debt securities to move their activities involving such transactions to unregistered affiliates. The extension of the exemption also is not designed to facilitate the creation of new types of options on debt securities to be written, purchased, or sold by an unregistered broker-dealer, if such instruments are of the type that are written, purchased, or sold by registered broker-dealers or are similar to conventional option contracts. Indeed, were such conduct to occur, the Commission would move quickly to revise or withdraw this order to constrain such conduct prior to September 30, 1996. In this regard. it is the Commission's intent to continue monitoring developments in the OTC derivatives market during the period in which the exemption is effective and to take prompt action to protect investors and maintain fair and orderly markets.

[Release No. 34–36258; File No. SR-NSCC-95–09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to a Modification to its Procedures to Allow the Processing of Voluntary Reorganizations with Protect Periods of Three Days or Greater

September 21, 1995.

On July 27, 1995, National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR–NSCC–95–09) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the Federal Register on August 22, 1995, to solicit comments from interested persons.² The Commission did not receive any comments. As discussed below, this order approves the proposed rule change.

I. Description

The proposed rule change modifies NSCC's Procedures, Section VII.H.4(b), to allow the processing of voluntary reorganizations (i.e., tender or exchange offers) with protect periods 3 of three days or greater through NSCC's Continuous Net Settlement ("CNS") system. Previously, only voluntary reorganizations with protect periods of five days or greater were eligible for NSCC's CNS system. All other voluntary reorganizations with protect periods of four days or less had to be settled on a trade by trade basis through NSCC's balance order system. On June 7, 1995, Rule 15c6–1⁴ adopted under the Act became effective requiring that most broker-dealer securities transactions be settled in three business days ("T+3"). Since the implementation of T+3, some voluntary reorganizations have had protect periods of three days rather than five days.

II. Discussion

The Commission believes that NSCC's proposed rule change is consistent with Section 17A of the Act.⁵ Specifically, Section 17A(b)(3)(F) ⁶ states that the

¹ 15 U.S.C. 78s(b) (1988).

² Securities Exchange Act Release No. 36097 (August 11, 1995), 60 FR 43629.

³ A protect period is generally understood to mean the amount of time after the expiration of a tender or exchange offer that the owner or record holder that has elected to participate in the offer has to submit the shares to the tender agent.

^{4 17} CFR 240.15c6-1 (1994).

^{5 15} U.S.C. 78q-1 (1988).

^{6 15} U.S.C. 78q-1(b)(3)(F) (1988).