

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57667; File No. SR-NSCC-2007-07)

April 15, 2008

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Restructure its Rules Relating to Fines and to Harmonize Them with Similar Rules of its Affiliates

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 30, 2007, the National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) and on December 10, 2007, and February 12, 2008, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to restructure the NSCC rules related to fines and where practicable or beneficial to harmonize them with similar rules of NSCC’s affiliates, The Depository Trust Company (“DTC”) and the Fixed Income Clearing Corporation (“FICC”). DTC and FICC have filed similar proposed rule changes.³ NSCC’s proposed revisions to its fine schedule are set forth in Exhibit 5 to its proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 57665 (April 15, 2008) [SR-DTC-2007-05].
Securities Exchange Act Release No. 57666 (April 15, 2008) [SR-FICC-2007-05].

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

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.⁴

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

(1) Fines Scheduled for Failure to Submit Financial and Other Information

NSCC members are assessed fines for failure to submit required financial, regulatory, and other information within the time frame established by NSCC. As part of the effort to harmonize its rules with its affiliates, NSCC is proposing to adopt the fine schedule currently utilized by FICC for this purpose. Pursuant to its filing, members would be fined \$300, \$600, and \$1,500 for their first, second, and third occasion of failing to timely provide financial, regulatory, and other related information. NSCC is also proposing changes to the footnotes of this section of the applicable fine schedule to make certain clarifications, including that the determination of the fine amount after the fourth or more occasion of an offense within a twelve month rolling period will be made by the Board of Directors.⁵

Often a member that is fined is a common member of NSCC and FICC, NSCC and DTC, or NSCC, FICC, and DTC, (collectively the "Clearing Agencies") which would cause the

⁴ The Commission has modified the text of the summaries prepared by NSCC.

⁵ Under NSCC rules, the terms "Board" or "Board of Directors" mean the Board of Directors of NSCC or a committee thereof acting under delegated authority.

member to incur multiple penalties for the same offense.⁶ NSCC is proposing that when a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies, as appropriate.⁷

(2) General Continuance Standards

NSCC's rules require a member to promptly notify NSCC of the member's non-compliance with general member continuance standards but do not set forth a specific time frame in which to do so and do not provide for the imposition of a fine for not promptly notifying NSCC. In the interest of harmonizing this provision with a similar FICC provision, NSCC is proposing to: (a) require the member to make such a notification within two business days; (b) require the member to notify NSCC within the two-day time frame if it becomes subject to a statutory disqualification; and (c) subject the member to a \$1,000 fine for failure to timely notify NSCC.

NSCC also currently imposes a fine in the amount of \$5,000 if an applicable member fails to notify NSCC of a material change to its business. Pursuant to NSCC's rules, a material

⁶ DTC does not currently maintain a fine schedule with respect to late submission of required financial, regulatory, or other information. However, DTC has filed a proposal to adopt a fine schedule similar to the one NSCC is proposing to adopt. Supra note 3.

⁷ For example, if a firm is a member of NSCC and FICC, did not submit its annual audited financial statements within the required time frame, and this was the firm's first failure to meet the deadline, the \$200 fine will be split equally between NSCC and FICC.

Where the member is a participant of DTC and also a member of one or more of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among the other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

change currently includes a merger or acquisition involving the member; a change in corporate form; a name change; a material change in ownership, control, or management; and participation as a defendant in litigation which reasonably could be anticipated to have a direct negative impact on the member's financial condition or ability to conduct its business. For uniformity with similar FICC provisions, NSCC is proposing to amend its rules so that notice of such events must be provided at least ninety calendar days prior to the effective date of such event unless the member demonstrates that it could not have reasonably given notice within that time frame.

With respect to both fines, NSCC is proposing to amend its rules to reflect that when a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies.⁸

(3) Fine Schedule for Late Clearing Fund Deficiency Payments

NSCC members are subject to fines for late payments of Clearing Fund deficiency calls. NSCC is proposing to amend the footnote to this section of its fine schedule to correspond with that of FICC's fine schedule as proposed by FICC in a separate rule filing.⁹ As proposed, if the number of occasions of late Clearing Fund deficiency call payments within a three-month rolling period exceeds four, NSCC will obtain the Board's concurrence for the fine amount.

⁸ DTC does not currently maintain a fine in this regard. However, DTC has filed a proposal to adopt a fine schedule similar to the one NSCC is proposing to adopt. Supra note 3.

Where the Member is a participant of DTC and is a common member of one or more of the other clearing agencies, the fine would be collected by DTC and allocated equally among other clearing agencies, as appropriate. If the member is not a DTC participant, but is a common member between NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

⁹ Supra note 3.

Furthermore, a late payment of more than one hour will result in a fine equal to the amount applicable to the next highest occasion for the specific deficiency amount.¹⁰ If a member is late for more than one hour and it is the member's fourth occasion in the rolling period, NSCC will obtain the Board's concurrence for the fine amount.

(4) Fine Schedule for Late Settlement Payments

The Clearing Agencies currently have provisions for fines for late payment of settlement obligations. NSCC is proposing to amend the footnote in this section of its fine schedule to correspond with those of the other Clearing Agencies. As proposed, if the number of occasions of late settlement payments within the rolling three-month period exceeds four, NSCC will obtain the Board's concurrence for the fine amount.¹¹ Furthermore, a payment late by more than one hour will result in a fine equal to the amount applicable to the next highest occasion for the specific deficiency amount. If a member is late by more than one hour and it is the member's fourth occasion in the rolling three-month period, NSCC will obtain the Board's concurrence for the fine amount.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act¹² and the rules and regulations thereunder because the restructuring of existing rules and procedures will assist NSCC members in interpreting and understanding the

¹⁰ For example, if a firm's deficiency amount is under \$1,000,000, it is the firm's second occurrence of late satisfaction of a deficiency call in the rolling three-month period, and the firm is late by more than one hour, the firm would be fined \$200 (i.e., the fine for a third occasion) instead of \$100 (i.e., the fine for a second occasion) pursuant to the proposed fine schedule.

¹¹ This change requires the removal of language granting NSCC discretion over the fine amount upon consultation with the settling bank only member, member, mutual fund/insurance services member, or fund member.

¹² 15 U.S.C. 78q-1.

rules with regard to fines. Members' enhanced ability to interpret and understand the rules with regard to fines will assist NSCC in meeting its Section 17A obligations to safeguard the funds and securities in its control or for which it is responsible.

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

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

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received.

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 the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSCC-2007-07 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NSCC-2007-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at

http://www.dtcc.com/downloads/legal/rule_filings/2007/nsc/2007-07-amendment.pdf and http://www.dtcc.com/downloads/legal/rule_filings/2007/nsc/2007-07-amendment2.pdf. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2007-07 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).