

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58123; File No. SR-NSCC-2007-08)

July 9, 2008

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend Membership Disqualification Criteria Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> 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 February 7, 2008, and on March 18, 2008, amended 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 parties.

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

NSCC is seeking to amend its membership disqualification criteria rules in an effort to create more uniformity with the rules of the Fixed Income Clearing Corporation (“FICC”) and The Depository Trust Company (“DTC”).<sup>2</sup>

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

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

<sup>2</sup> DTC and FICC have filed proposed rule changes seeking to harmonize their membership disqualification criteria rules with each other and with NSCC.

below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

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

The purpose of this filing is to amend the NSCC rules as they relate to membership disqualification criteria in an effort to create more uniformity between the rules of NSCC and the rules of NSCC's affiliates, FICC and DTC.

Currently, Addendum S of the rules sets forth NSCC's policy as to standards relating to competence for membership. The Addendum includes both objective and subjective factors that may be considered by NSCC in its evaluation of an applicant or the continued membership of a particular member. Going forward, NSCC is proposing to amend its rules to only include those disqualification criteria that can be objectively monitored by Risk Management staff. For example, NSCC proposes to delete from its rules specific references to criteria that may not be reported in a regulatory background check, such as an entity being subject to "heightened supervision" by a regulatory body. NSCC is proposing to include in its rules a general provision to permit consideration of events with respect to an applicant or member that may not be expressly mentioned but that may impact a member's suitability as a member.

In addition, pursuant to NSCC's current disqualification criteria, NSCC can consider the criteria with respect to a person or entity that has "significant managerial responsibility" over the applicant or member. Because it is not easily ascertainable as to what entities or individuals have "significant managerial responsibility" over a particular entity, NSCC is proposing to

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<sup>3</sup> The Commission has modified the text of the summaries prepared by NSCC.

amend these provisions in the rules so that they are consistent with internal surveillance procedures. Going forward, NSCC will extend the reach of certain disqualification criteria to persons and entities acting as “controlling management,” which will include those officers of the entity that are currently screened by Risk Management staff pursuant to internal procedures.

Specifically, NSCC’s disqualification criteria will now include:

- (i) An applicant or member being subject to statutory disqualification as defined in Section 3(a)(39) of that Act.<sup>4</sup> While this provision currently exists in the rules, it will be moved within the rules and will be grouped with all other disqualification criteria.
- (ii) An applicant, member, or its controlling management making a misstatement of material facts; committing fraudulent acts; or being convicted of any of the crimes listed in the rule.
- (iii) An applicant, member, or its controlling management being permanently or temporarily enjoined from acting on behalf of a financial institution such as a broker-dealer.
- (iv) An applicant or member’s suspension or termination from participation in a national securities association, exchange registered under the Exchange Act, a self-regulatory organization, clearing agency, or securities depository.

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(..continued)

<sup>4</sup> The NSCC rules will also provide that applicants and members must notify NSCC if any member of its controlling management is or becomes subject to a statutory disqualification, as defined in Section 3(a)(39) of the Act.

Pursuant to the proposed change, NSCC would also continue to be able to cease to act for a member when any of the factors in sections (i) through (iv) above are present. Addendum S would be struck entirely from the rules, and the listed disqualification criteria would be included in NSCC's proposed Rule 2A "Initial Membership Requirements."<sup>5</sup>

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder applicable to NSCC because it will remove impediments to the perfection of a national system for the prompt and accurate clearance and settlement of securities transactions and is not designed to permit unfair discrimination in the admission of participants or among participants in the use of NSCC by refining NSCC's rules and procedures with regard to applicants and members, and in general will protect investors and the public interest.

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

NSCC does not believe that the proposed rule change would impose any burden on competition.

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<sup>5</sup> NSCC has also filed proposed rule change SR-NSCC-2006-17 which seeks to reorganize NSCC's rules related to membership standards and membership requirements.

<sup>6</sup> 15 U.S.C. 78q-1.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received. NSCC will notify the Commission of any written comments it receives.

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, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2007-08 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-2007-08. 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 filing 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/2007-08.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2007/nsc/2007-08.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-2007-08 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.<sup>7</sup>

Florence E. Harmon  
Acting Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).

