

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59302; File No. SR-NSCC-2008-12)

January 27, 2009

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Allow the Transfer and Reregistration of Fund/SERV Eligible Fund Positions to and from a Financial Intermediary and a Mutual Fund Company

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on December 23, 2008, the National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(4)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

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

The purpose of the rule change is to allow for transfer and reregistration of Fund/SERV Eligible Fund positions to and from a financial intermediary and a mutual fund company.

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(4).

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.<sup>4</sup>

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

Currently NSCC's rules permit the transfer of Fund/SERV eligible shares from one member to another member through NSCC's Automated Customer Account Transfer Service ("ACATS") or from one fund member to another fund member through the Transfer of Retirement Assets ("ToRA") service. In an effort to further standardize and automate the account transfer and reregistration process between members and mutual fund companies, NSCC is proposing to accommodate the transfer of customer mutual fund share registration: (i) held by a customer directly at a mutual fund company to be reregistered in the name of a financial intermediary and (ii) held by a financial intermediary to be reregistered as a direct customer position at the mutual fund company. A member can request the transfer of registration in the capacity of the party receiving the reregistration or in the capacity of the party transferring the registration. The contra-side NSCC fund member must accept the reregistration request in order for NSCC to process it.

NSCC is also proposing that, unless the parties agree otherwise, the member and fund member will comply with certain legal responsibilities associated with the reregistration. The

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<sup>4</sup> The Commission has modified the text of the summaries prepared by NSCC.

member will agree that in initiating the request it has obtained the requisite authorization from the account holder and that it will provide a copy of it to the fund member upon request. The member also will indemnify the fund member for any liabilities incurred in or associated with the request other than those relating to the negligence or misconduct of the fund member. In connection with reregistrations of IRA and other tax-deferred accounts, a member that makes the transfer request in its capacity as a successor custodian agrees that it is so qualified under the provisions of the Internal Revenue Code. NSCC is also proposing that the members will agree that any dispute between them relating to these provisions will be resolved directly between them and that NSCC is not a party to such dispute and has no responsibility with respect to the enforcement or satisfaction of such provisions. In addition, the submission or processing of a transfer transaction through NSCC will not extinguish or otherwise affect any of the participants' legal rights arising out of the transaction.<sup>5</sup>

The proposed rule change is consistent with Section 17A of the Act,<sup>6</sup> as amended, because it will reduce the likelihood of manual processing errors, will lower costs, and will reduce the time needed to complete the transfer of customer mutual fund share registrations, thereby promoting the prompt and accurate clearance and settlement of reregistration of mutual fund share positions processed through NSCC's Fund/SERV service.

(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.

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<sup>5</sup> Similar provisions are contained in NSCC rules relating to other mutual fund services. See, e.g., NSCC Rule 50, Section 17 and NSCC Rule 52, Section 46.

<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 relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(4)<sup>8</sup> thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that: (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(4).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2008-12 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NSCC-2008-12. 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 Room, 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/2008/nsc/2008-12.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2008/nsc/2008-12.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-2008-12 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>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).