

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59321; File No. SR-NSCC-2008-08)

January 30, 2009

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change to Amend Rules to Add an Agreement from Fund Members that Submit Mutual Fund Profile Information

I. Introduction

On September 30, 2008, the National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-NSCC-2008-08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).<sup>1</sup> Notice of the proposal was published in the Federal Register on December 29, 2008.<sup>2</sup> For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The Mutual Fund Profile Service (“Profile”) is a central data source for comprehensive fund prospectus and operational information relating to mutual funds. The repository is a recognized industry standard for information critical to the distribution of mutual funds in the third-party market.

Profile is organized into three databases: (1) Security Issue Database (containing information such as Security ID number, security name, fee structure, investment objectives, breakpoint schedule data, and blue sky eligibility); (2) Participant Database (containing contact information, NSCC processing capabilities and restrictions or requirements); and (3) Distribution Database (containing projected or actual distributions, capital gains and dividend

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

<sup>2</sup> Securities Exchange Act Release No. 59105 (December 16, 2008), 73 FR 79530.

amounts and details, and commission information). NSCC fund members input data regarding their mutual funds into the Security Issue and Participant Profile databases. Profile is then accessed by the NSCC members that are mutual fund distributors.

NSCC has recently enhanced the Security Issue Database in Profile to include new data fields needed by distributors and to re-engineer the structure of the data hierarchy to be easier for fund members to populate their data. Some of the enhancements to the Profile database were initiated in response to a recommendation in the Report (“Report”) of The Joint NASD/Industry Task Force on Breakpoints (“Task Force”).<sup>3</sup> NSCC has also adopted measures to assist funds members in validating their data once it is in the Profile database by developing reports that note probable inconsistencies among related data fields, by arranging for free access by fund members to a vendor tool that verifies Profile data, and by reaching out to fund members in the form of personal contacts and an on-line web demonstration on populating data into the Profile database.

Consistent with its efforts to expand Profile’s capabilities as a comprehensive and accurate source for the mutual fund distribution industry, NSCC is now amending its rules to add an agreement that requires NSCC fund members to have taken reasonable steps to validate the accuracy of their data they submit to the Profile database. This agreement is not intended to be

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<sup>3</sup> The Task Force was formed in 2003 by the National Association of Securities Dealers (“NASD”, now “FINRA”) with the participation of major fund companies, broker-dealers, NSCC, the Securities Industries Association and the Investment Company Institute, in response to the NASD examination findings in which it was discovered that investors frequently failed to receive appropriate breakpoint discounts in front-end sales load mutual fund transactions. Recommendation (B) of the report stated that NSCC’s Profile database should be expanded to include breakpoint aggregation terms and rules for all fund families and should include identification of both link-eligible products (for example, retirement plans, annuities, and insurance products and college savings plans with mutual fund holdings). The Report also noted that for this database to be effective, it must also be comprehensive. Accordingly, mutual funds must fully and accurately populate the database and must update the database on a timely basis.

either a basis for independent legal rights against the fund member or is any third party intended or permitted to rely upon it as a representation to a third party or upon which a third-party can base any legal rights. NSCC requires similar agreements from its members elsewhere in its rules and in its membership agreement, such as the agreement required of a fund member in Section 2 of Rule 51 to not submit a transaction through NSCC's Mutual Fund Services in contravention of any applicable regulatory requirements.

### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.<sup>4</sup> The rule change is consistent with the requirements of Section 17A of the Act, because it should promote the prompt and accurate clearance and settlement of securities transactions by modifying an NSCC service in order to reduce the inherent risks associated with securities certificates. Since NSCC's Profile database is widely used by mutual fund distributors in processing the distribution of mutual fund shares, the proposed rule change should facilitate the prompt and accurate clearance and settlement of securities transactions by assisting in the

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<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

overall processing efficiency of mutual fund transactions and reducing processing difficulties resulting from incomplete or inaccurate information.

Accordingly, for the reasons stated above the Commission believes that the rule change is consistent with NSCC's obligation under Section 17A of the Act.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.<sup>5</sup>

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-2008-08) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>5</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.

<sup>6</sup> 17 CFR 200.30-3(a)(12).