

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57404; File No. SR-NSCC-2007-06)

February 29, 2008

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change to Modify the Hearing Procedures Afforded to Members and Applicants for Membership and Harmonize Them with Similar Rules of its Affiliates

I. Introduction

On April 30, 2007, the National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-NSCC-2007-06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ The proposed rule change was published for comment in the Federal Register on December 6, 2007.² No comment letters were received on the proposal. This order approves the proposal.

II. Description

The proposed rule change (1) modifies NSCC’s rules regarding hearing procedures afforded to members and applicants for membership and (2) where practicable or beneficial, harmonizes such rules with similar rules of NSCC’s affiliates, The Depository Trust Company (“DTC”) and the Fixed Income Clearing Corporation (“FICC”).³

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 56865 (Nov. 29, 2007), 72 FR 68930.

³ DTC and FICC have filed similar proposed rule changes. Securities Exchange Act Release No. 56863 (Nov. 29, 2007), 72 FR 68920, Securities Exchange Act Release No. 57406 (Feb. 29, 2008) [SR-DTC-2007-06]. Securities Exchange Act Release No. 56864 (Nov. 29, 2007), 72 FR 68922, Securities Exchange Act Release No. 57405 (Feb. 29, 2008) [SR-FICC-2007-06].

A. Minor Rule Violation Plan

In 1984, the Commission adopted amendments to Rule 19d-1(c) under the Act⁴ that allow self-regulatory organizations with Commission approval to adopt plans for the disposition of minor violations of rules.⁵

Currently under NSCC's rules, a member or applicant subject to disciplinary action has a right to a hearing before a panel comprised of members of NSCC's Credit and Market Risk Management Committee regardless of the severity of the action for which the member or applicant is being disciplined.⁶ Because some rule violations are not sufficiently serious to merit Board review, NSCC is adopting a Minor Rule Violation Plan within the meaning of Rule 19d-1(c)(2) under the Act for those rule violations NSCC deems minor. Consistent with Rule 19d-1(c)(2) under the Act, NSCC is designating as minor rule violations those rule violations for which a fine may be assessed in an amount not to exceed \$5,000. If a member disputes a fine imposed by NSCC by filing a written request for hearing and a written statement setting forth, among other things, the action or proposed action with respect to which a hearing is being requested and the basis for the objection to such action, NSCC management would have the authority to waive the fine. NSCC management would notify the Board of Directors or a Committee authorized by the Board of Directors of its determination to waive the fine and would provide the reasons for the waiver. The Board or Committee could in its discretion decide to

⁴ 17 CFR 240.19d-1(c).

⁵ Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) [File No. S7-983A].

⁶ If the action or proposed action of NSCC as to which the hearing relates has been taken or has been proposed to be taken by the Credit and Market Risk Management Committee, the members of the panel shall be drawn from members of the Executive Committee of NSCC's Board of Directors. See Rule 37 (Hearing Procedures), Section 2.

reinstate any fine waived by NSCC management. If NSCC management were not to waive the fine, the member could appeal the decision to a panel comprised of NSCC officers (“Minor Rule Violation Panel”).

B. Hearings for All Other Violations and Minor Rule Violation Appeals

For matters involving (1) an alleged violation of an NSCC rule for which a fine in an amount of over \$5,000 is assessed, (2) applicants for membership, (3) other disciplinary actions to which the Minor Rule Violation Plan would not apply, or (4) for appeals from a Minor Rule Violation Panel decision adverse to a member or applicant, the member or applicant is entitled to a hearing before a panel comprised of three individuals of the NSCC Board of Directors or their designees appointed by the Chairman of the NSCC Board. Decisions of the panel are final; however, the full Board of Directors retains the right to modify any sanction or reverse any decision of the panel that is adverse to the member or applicant.

Currently with respect to hearings, a member or applicant is afforded the opportunity to be heard and may be represented by counsel if desired. A record is kept of the hearing, and at the discretion of the panel, the associated cost may be charged in whole or part to the member or applicant in the event that the decision is adverse to the member or applicant. The member or applicant is advised of the panel’s decision within ten business days after the conclusion of the hearing. These procedures would also apply with respect to the Minor Rule Violation Plan.

C. Administrative Changes: Uniformity of Time Frames

The rule changes will implement uniform time periods among NSCC, DTC, and FICC governing actions a member or applicant would be required to take in order to request a hearing.⁷

⁷ DTC rules do not impose an accelerated deadline for an Interested Person to request a hearing in the case of summary action taken against the Interested Person. A summary action is an action taken prior to a hearing to determine the

Under the rule change, a member or applicant has five business days, or two business days in the case of a summary action taken against the member or applicant pursuant to Rule 46,⁸ from the date on which NSCC first informs it of a sanction or a denial of membership in which to request a hearing.

Within seven business days, or three business days in the case of a summary action taken against the member or applicant, after filing a request for a hearing with NSCC, the member or applicant is required to submit to NSCC a clear and concise written statement setting forth the action or proposed action of NSCC with respect to which the hearing is requested, the basis for objection to such action, whether the member or applicant intends to attend the hearing, and whether the member or applicant chooses to be represented by counsel at the hearing.

D. Pending Changes from NSCC Rule Filing SR-NSCC-2006-17

The current time frame for an applicant or member to request a hearing appears in the following rules: Rule 2 (“Members”), Rule 3 (“Lists to Be Maintained”), Rule 51 (“Fund Member”), Rule 54 (“Settling Bank Only Members”), Rule 56 (“Insurance Carrier/Retirement Services Member”), and Rule 60 (“TPA Member”).⁹ Each of those rules is pending deletion as part of rule filing SR-NSCC-2006-17. Accordingly, since this filing is approved prior to the approval of SR-NSCC-2006-17, the time frame for an applicant or member to request a hearing that appears in those rules is also deleted.

propriety of the action.

⁸ Examples of a summary action are a suspension of a member or restriction of a member’s access to services as described in Rule 46 (“Restrictions on Access to Services”).

⁹ The current time frame for an applicant or member to request a hearing also appears in Rule 45 (“Notices”). This rule filing deletes that reference also.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),¹⁰ which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions and with the requirements of Section 17A(b)(3)(H)¹¹ which, among other things, requires that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants and the denial of participation to any person seeking to be a participant. The Commission finds that the proposed rule change, which harmonizes NSCC's hearing procedure rules with those of DTC and FICC and which adopts a Minor Rule Violation Plan, is consistent with those statutory obligations.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act¹² and the rules and regulations thereunder.

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 15 U.S.C. 78q-1(b)(3)(H).

¹² 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (File No. SR-NSCC-2007-06) be, and hereby is, approved.¹⁴

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 17 CFR 200.30-3(a)(12).