

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58314; File No. SR-NSCC-2008-07)

August 5, 2008

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Enhance Processing of Exchange-Traded Funds

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 22, 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. 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

The proposed rule change seeks to: (i) expand processing of shares in exchange-traded funds (“Index Receipts”) to allow for cash as a sole component of creations and redemptions and (ii) provide for an optional shortened processing cycle for creates and redeems of Index Receipts and their underlying components.

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.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

NSCC began processing Index Receipts with the launch of the first exchange-traded fund, the SPDR, in 1993. NSCC's Index Receipt processing supports: (i) the creation of Index Receipt units whereby a member will deliver the underlying component shares to the Index Receipt agent and receive Index Receipts and (ii) the redemption of Index Receipt units whereby a member will deliver the Index Receipts and receive the underlying components.

(1) Current Process

Currently, on the day before trade date ("T-1"), an Index Receipt agent transmits files to NSCC that contain information regarding the underlying composition of Index Receipts for creates and redeems occurring the next business day.<sup>4</sup> NSCC compiles the information that evening and provides members with a portfolio composition report listing the composition of Index Receipts eligible for processing. The report displays the proportionate amount of underlying stocks that compose each Index Receipt and contains a cash component, which is an estimation of accrued dividends and any necessary balancing amount.<sup>5</sup> The portfolio information contained in this report is used for creation and redemption processing the next day, which is the Trade Date. On Trade Date, by such time as established by NSCC, the Index

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

<sup>4</sup> NSCC's current processing functions are set forth in Procedure II, Section H of NSCC's Rules.

<sup>5</sup> The balancing amount is designed to compensate for any difference between the net asset value of the Index Receipt and the value of the underlying index. Among other reasons, a difference in value could result from the fact that an Index Receipt cannot contain fractional shares of a security.

Receipt agent, acting on behalf of each member placing an Index Receipt order, will report to NSCC the number of Index Receipts created and redeemed that day. Such a report constitutes locked-in transactions between the Index Receipt agent and the member. The Index Receipt agent also will report the final cash amount and a transaction amount that represents the Index Receipt agent's transaction fee. On the night of Trade Date, NSCC transmits an Index Receipt instruction detail report to members that had activity on Trade Date. The report serves as the contract for the creation and redemption activity and lists the number of component shares that the member, depending upon the underlying shares' CNS eligibility, will deliver to or receive from CNS on settlement date ("T+3") or otherwise as an item as allotted through the Balance Order Accounting System. On the night of Trade Date, each Index Receipt instruction is separated into its underlying stock components, and these components are processed through CNS or the Balance Order Accounting Operation and are incorporated into the normal equity clearance and settlement process. Unsettled positions in Index Receipts and their component securities are currently risk managed as ordinary activity and guaranteed pursuant to the provisions of Addendum K of NSCC's rules.

(2) Proposed Enhancements

NSCC currently supports the creation and redemption of Index Receipts with underlying components that are CNS eligible securities scheduled to settle on a T+3 basis. The Index Receipts and the components themselves are processed through CNS. Index Receipts that are not eligible for processing through NSCC are routinely processed outside of NSCC. For the past two years, demand for NSCC's create and redeem service has increased significantly per annum with activity for Index Receipts with non-U.S. equity components increasing the most. As more fully described below, the proposed enhancements will allow members to create Index Receipts

that (i) have underlying securities other than domestic equity securities for cash as consideration and (ii) will allow an optional shortened settlement cycle for creates and redeems and their underlying components.

A. Expand the Index Receipt process to allow for Cash as Sole Component for Creations and Redemptions

Currently all component securities must be CNS eligible to qualify for NSCC's create and redeem process. Cash is used as a component only for accrued dividends and any balancing amount but not as a separate underlying component.

NSCC is proposing to expand its Index Receipt processing to allow for creates and redeems using cash as the sole underlying component. This enhancement would allow members and their agent banks to create and redeem Index Receipts whose underlying components are not currently eligible for processing at NSCC (for example, commodity Index Receipts). The Index Receipt agent would use the cash to purchase the components, the settlement of which would occur outside of NSCC.

B. T+1 and T+2 Settlement of Creations and Redemptions

NSCC currently supports the creation and redemption of Index Receipts with underlying components scheduled to settle on a T+3 basis. NSCC is proposing to expand its Index Receipt processing to allow a member to create and redeem Index Receipts on a shortened settlement cycle. NSCC also is proposing to revise its processing to address the timing of the NSCC trade guarantee as well as associated trade processing and Clearing Fund provisions for such shortened settlement Index Receipts.

Currently, shortened settlement for standard equity CNS trades (e.g., next day settlement) are reported in the Consolidated Trade Summary and guaranteed on the night of T. NSCC then collects Clearing Fund payments at 10 a.m. on T+1. Because next day settling trades are

effectively guaranteed in the CNS night cycle prior to margining, NSCC currently uses a process that takes that uncertainty into consideration by collecting a “look-back” premium in the Clearing Fund calculation.<sup>6</sup> Leveraging this existing practice for next-day settlement of creates and redeems would be cost-prohibitive based on the large number of “in kind” shares<sup>7</sup> that are exchanged in this process.

NSCC is therefore proposing to delay processing of next day settling creates and redeems and their underlying components until the CNS day cycle on T+1.<sup>8</sup> These transactions would be reported on the Second Supplemental Consolidated Trade Summary that is generally released mid-day. Delayed processing would allow NSCC ample time to collect Clearing Fund payments prior to guaranteeing the transactions and thus obviate the need for the look-back Clearing Fund premium but still allow the trades to settle on T+1.<sup>9</sup>

In addition, NSCC plans to implement a new fee for shortened-cycle creates and redeems as more fully described below.

Therefore, NSCC proposes to amend its Rules as follows to provide for settlement of index receipt transactions on T+1 or T+2 on an optional basis:

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<sup>6</sup> In order to account for the risk of unknown positions, Risk Management performs a look-back calculation to estimate shortened settlement volumes and values. The shortened settlement component is added to a members’ Clearing Fund requirement for 21 days after each shortened settlement occurs.

<sup>7</sup> Most Index Receipts are created and redeemed in units of 50,000. In other words, if a member were to create six units it would receive 300,000 shares of the Index Receipt securities.

<sup>8</sup> The CNS day-cycle is typically run at 11:30 a.m. Component securities that are not CNS-eligible would be processed through the Balance Order Accounting Operation.

<sup>9</sup> If margin is not timely collected on T+1, creates and redeems may not be processed.

(i) Amendment of Addendum K regarding guarantee of next day settling index receipts

NSCC proposes to amend Addendum K to provide that settlement of creates and redeems, including the underlying components, on a T+1 basis (including T+2 settling as-of creates and redeems submitted on T+1) will be guaranteed on Settlement Date when NSCC determines to complete processing for those items in the day cycle (normally, 11:30 a.m.); provided, however, that the transaction is not removed from processing as described below.<sup>10</sup>

(ii) Amendment of Procedure II to allow for settlement on a shorter than T+3 basis.

NSCC proposes to amend Procedure II, Section H to provide that: (i) the Index Receipt agent may elect for settlement of the creates and redeems on a T+1 or T+2 basis, (ii) as-of Index Receipt creates and redeems will only be accepted if submitted by the cut-off time designated by NSCC with submission of next-day settling creates and redeems required by such cut-off time on T, (iii) NSCC reserves the right to remove Index Receipt transactions from processing in the event that the applicable member has not met a margin call on settlement date, and (iv) next day settling creates and redeems (including T+2 settling as-of creates and redeems submitted on T+1) will be posted to the Second Supplemental Consolidated Trade Summary and processed in the day cycle of the CNS Accounting Operation.

(iii) Amendment of Procedure XV (Clearing Fund Formula)

NSCC proposes to amend Procedure XV to provide that creates and redeems of Index Receipts, as well as the underlying components, will not be subject to the “20-day look back provision,” which provides for a charge based on the average of the member’s three highest

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<sup>10</sup> In addition, the transaction must be submitted for recording by an Index Receipt agent by such cutoff time as designated by the NSCC (pursuant to Procedure II).

aggregate calculated charges for daily “Specified (shortened cycle) Activity” measured over the most recent 20 settlement days.

(iv) Amendment of Addendum A (Fee Structure)

The current fee for regular-way (T+3) settlement of creates and redeems is \$30 per create and redeem. To offset additional costs associated with shortened settlement processing, NSCC plans to implement a new fee of \$50.00 per create and redeem with a shortened settlement cycle.

(3) Implementation timeframe

NSCC proposes to implement the changes set forth in this filing in the third quarter of 2008. Members will be advised of the implementation date through issuance of NSCC Important Notices.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>11</sup> and the rules and regulations thereunder because accelerated settlement of creates and redeems of Index Receipts facilitates the prompt and accurate clearance and settlement of securities transactions.

(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. NSCC will notify the Commission of any written comments received by NSCC.

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<sup>11</sup> 15 U.S.C. 78q-1.

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2008-07 on the subject line.

#### Paper comments:

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

All submissions should refer to File Number SR-NSCC-2008-07. 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/2008/nsc/2008-07.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2008/nsc/2008-07.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-2008-07 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.<sup>12</sup>

Florence E. Harmon  
Acting Secretary

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