

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72029; File No. SR-NSCC-2014-03)

April 25, 2014

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change to Enhance the System that Processes Corporate Actions Within NSCC's Continuous Net Settlement System

I. Introduction

On March 6, 2014, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2014-03 ("Proposed Rule Change") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The Proposed Rule Change was published for comment in the Federal Register on March 21, 2014.³ The Commission did not receive comments on the Proposed Rule Change. This Order approves the Proposed Rule Change.

II. Description

With this Proposed Rule Change, NSCC will amend its Rules and Procedures ("Rules")⁴ to enhance the system that processes corporate actions within NSCC's Continuous Net Settlement ("CNS") system. NSCC plans to implement the enhancements contained the Proposed Rule Change in multiple phases during 2014, which NSCC will announce by Important Notice.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Release No. 34-71725 (Mar. 14, 2014), 79 FR 15780 (Mar. 21, 2014) (SR-NSCC-2014-03).

⁴ Defined terms not defined herein have the mean set forth in the Rules.

One of NSCC's core services as a central counterparty is to clear and settle trades through CNS. In CNS, compared and recorded transactions in CNS-eligible securities⁵ that are scheduled to settle on a common settlement date are netted by issue into one net long (i.e., buy) or net short (i.e., sell) position. CNS then nets those positions further with positions of the same issue that remain open after their originally scheduled settlement date ("Fail Positions"). The result is a single deliver or receive obligation for each NSCC member ("Member") for each issue in which the Member has activity on a given day.

As part of the services offered to Members, certain corporate actions, including cash dividends, stock dividends, bond interest, and other mandatory corporate actions (which include redemptions, stock and cash mergers, and name changes) are automatically debited or credited to Members' CNS accounts with open Fail Positions in CNS. Members are also permitted to take part in certain voluntary corporate actions, which include tender or exchange offers, with respect to open Fail Positions in CNS.

Upon implementation of the Proposed Rule Change, NSCC will make enhancements to its processing of corporate actions within the CNS system, as described below.

A. Optional Dividends

When a Fail Position in CNS is subject to a dividend payment, the issuer specifies the form in which that dividend will be paid (e.g., securities or cash) ("Default Option"). NSCC Members that have failed to receive securities from CNS ("Long Members") may elect a form of payment that differs from the Default Option by submitting an instruction to NSCC no later than

⁵ To be CNS-eligible, a security must be eligible for book-entry transfer on the books of The Depository Trust Company ("DTC"), an NSCC affiliate, and must be capable of being processed in the CNS system. For example, securities may be ineligible for CNS processing due to certain transfer restrictions (e.g., 144A securities) or due to the pendency of certain corporate actions.

a pre-set date and cut-off time. NSCC currently sets a cut-off time for the submission of such election instructions based on the cut-off time set by DTC. Under the Proposed Rule Change, NSCC will set the date and cut-off time that is earlier than the DTC cut-off time in order to provide Members that have failed to deliver securities to CNS (“Short Members”) with additional time to communicate elections to their customers. Additionally, such elections are currently submitted to NSCC manually; however, upon implementation of the Proposed Rule Change, the elections will be submitted to NSCC electronically.

B. Support “Offer to Consent” Tender/Exchange Offers

Today, if an open Fail Position in CNS is subject to a tender or exchange offer that includes an “offer to consent,” in order to participate in that tender or exchange offer the Fail Position would be closed, exited out of CNS, and would then settle directly between the counterparties outside of CNS. With this Proposed Rule Change, Members with open Fail Positions in CNS will be able to participate in tender or exchange offers that include an “offer to consent” within CNS.

C. Protect Submission and Liability Notification

Currently, the cut-off time for a Long Member to place a “protect” on an open Fail Position in CNS in order to participate in an upcoming corporate action or to add shares to a voluntary corporate action is either (i) on the business day prior to the “protect” expiration date, or (ii) on the business day prior to the expiration date of the corporate action if there is no “protect” for that corporate action. Failure to meet those deadlines often results in Long Members incurring additional costs. As such, NSCC staff, in its discretion and on a best efforts basis, has accepted and processed such “protect” instructions either on the “protect” expiration date or on the expiration date of the corporate action.

Upon implementation of the Proposed Rule Change, for a fee of \$500,⁶ Members will be permitted to place a “protect” on an open fail position in CNS in order to participate in an upcoming corporate action or to add shares to a voluntary corporate action either (i) on the “protect” expiration date, or (ii) on the expiration date of the corporate action if there is no “protect” for that corporate action. Additionally, with this Proposed Rule Change, Members will submit “protect” instructions to NSCC electronically.

D. Final Liability and Final Protection Notification

Today, CNS alerts Short Members of their final assigned liability with respect to voluntary corporate actions either (i) on the business day after the “protect” expiration date for that corporate action, or (ii) on the business day after the expiration date of the corporate action if there is no “protect” for that corporate action.

Upon implementation of the Proposed Rule Change, CNS will alert a Short Member of its assigned final liability no later than the close of business on the same business day the final liability is assigned to that Member by CNS. The Proposed Rule Change will also clarify that Long Members will be notified that their Fail Positions in CNS will be subject to the “protection” for that corporate action no later than the close of business on the same business day the final “protection” is assigned to that Member by CNS.

E. SMART/Track for CNS Corporate Actions

With this Proposed Rule Change, Members will submit instructions to participate in a voluntary reorganization and access all corporate action processing output data through SMART/Track for CNS Corporate Actions, which is available within NSCC’s SMART/Track for Corporate Action Liability Notification Service. The output data, which is currently

⁶ The Commission understands that NSCC will propose this fee in a separate rule filing with the Commission.

delivered to Members through files and reports, will be visible through on-line screens and include search options and filters.

F. Restriction on Movement of Positions between CNS Sub-Accounts

Under the Proposed Rule Change, when a voluntary reorganization is being processed on a security, CNS will no longer permit the movement of positions in that security between non-reorganization sub-accounts (e.g., the CNS General Account and the CNS Fully-Paid-For Account) either (i) on the “protect” expiration date, or (ii) on the expiration date of the voluntary reorganization if there is no “protect” for that voluntary reorganization.

G. Additional Rule Changes

In addition to the enhancements described above, with this Proposed Rule Change NSCC will amend its Rules to clarify that the Rules are drafted assuming the processing of subject securities with a “protect” period of three days. Similarly, the table that is currently included in the Rules regarding this topic will be updated to further illustrate the timeframes for processing of subject securities with a “protect” period of two days or less.

III. Discussion and Commission Finding

Section 19(b)(2)(C) of the Act⁷ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act⁸ requires that the rules of a clearing agency be designed to, among other things, “promote the prompt and accurate clearance and settlement of securities transactions and ... to assure the safeguarding of securities and funds which are in the

⁷ 15 U.S.C. 78s(b)(2)(C).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

custody or control of the clearing agency or for which it is responsible.”⁹ Here, the Commission finds the enhancements to be implemented by the Proposed Rule Change consistent with those requirements because each change discussed above should result in greater efficiency and automation with respect to the processing of corporate actions within CNS, thus promoting the prompt and accurate clearance and settlement of securities transactions.

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 Act¹⁰ and the rules and regulations thereunder.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR-NSCC-2014-03 be, and it hereby is, APPROVED.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).