

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62385; File No. SR-NSCC-2010-05)

June 25, 2010

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Enhance the Process for Transfers Through the Automated Customer Account Transfer Service

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 June 4, 2010, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The purpose of this proposed rule change is to enhance NSCC’s process for transfers through the Automated Customer Account Transfer Service (“ACATS”).

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.

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

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

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

NSCC's ACATS system enables Members to effect automated transfers of customer accounts among themselves.<sup>3</sup> For ACATS transfers processed through NSCC's Continuous Net Settlement ("CNS") system<sup>4</sup>, long and short positions are passed against Members' positions at The Depository Trust Company ("DTC") and available securities are delivered from short Members' accounts at DTC and allocated to long Members' accounts by book-entry.

NSCC is proposing changes to its ACATS system in connection with a concurrent rule change proposed by DTC.<sup>5</sup> NSCC is proposing these changes for two general reasons. First, NSCC would like to enhance protection for customer securities in ACATS transfers so that customer account transfers to new firms would be maximized in the event of a Member failure. Accordingly, NSCC would modify its ACATS processing and its Rules so that deliveries or receives processed through CNS would satisfy a Member's ACATS receive or deliver obligation prior to satisfying another CNS-related obligation of that Member in the same

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<sup>3</sup> ACATS complements a Financial Industry Regulatory Authority ("FINRA") rule requiring FINRA members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames.

<sup>4</sup> CNS is an ongoing accounting system which nets today's settling trades with yesterday's closing positions to produce a net short or long position for a particular security for a particular Member. NSCC is the counter party for all positions. The positions are then passed against the Member's designated depository positions and available securities are allocated by book-entry. This allocation of securities is accomplished through an evening cycle followed by a day cycle. Positions which remain open after the evening cycle may be changed as a result of trades accepted for settlement that day. CNS allocates deliveries in both the night and day cycles using an algorithm based on priority groups in descending order, age of position within a priority group, and random numbers within age groups.

<sup>5</sup> DTC is proposing its concurrent rule change with the Commission in filing SR-DTC-2010-09.

security. NSCC would also track CNS ACATS items to prevent reversal of completed items in the event of a Member's failure. Second, NSCC would like to facilitate compliance by its Members with their securities possession and control requirements.<sup>6</sup> To that end, NSCC proposes modifying its Rules to clarify that in no event does NSCC have a lien on securities carried by a Member for the account of its customers that are delivered through the CNS ACATS service.<sup>7</sup>

#### 1. ACATS Transfers Through the CNS System

Through ACATS, an NSCC Member to which a customer's securities account is to be transferred ("Receiving Member") may submit a Transfer Initiation Request to initiate the account transfer process. When a Receiving Member accepts a customer account transfer, NSCC causes all CNS-eligible items in that customer account to enter NSCC's CNS accounting operation on the day before settlement date unless the Receiving Member notifies NSCC that certain items should be withheld from CNS processing.<sup>8</sup>

Ordinary CNS items enter the system at contract value, but ACATS items enter CNS unvalued. This reflects the nature of the ACATS CNS items as "free" transfers. To incentivize

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<sup>6</sup> Commission Rule 15c3-3 provides that a broker-dealer shall promptly obtain and shall thereafter maintain the physical possession or control of all fully paid securities and excess margin securities carried for the account of customers.

<sup>7</sup> DTC's Settlement Service Guide currently provides that securities delivered to a receiving DTC Participant's account from CNS are classified as collateral which may otherwise be made available to NSCC in the event that the DTC Participant fails to meet its NSCC settlement obligation. Pursuant to a separate rule filing, DTC is proposing revisions to its service guide so that ACAT deliveries from CNS would be designated by the DTC Participant as "Minimum Amount Securities" when credited to the Participant's account. This designation would prevent the securities from being designated as collateral for either this purpose or for purposes of DTC's Rules. DTC Rule 1 for the definition of Minimum Amount Securities.

<sup>8</sup> NSCC Rule 50 (Automated Customer Account Transfer Service).

deliveries, ACATS items are marked-to-the-market on the morning of settlement date using their full CNS value as of the prior day's closing price. Consequently, the Delivering Member's CNS projection report shows a short securities position, and its CNS cash reconciliation report shows a cash debit for the "full value" mark. Conversely, the Receiving Member's projection report shows a long securities position, and its cash reconciliation report shows a cash credit equal to the "full value" mark. If the Delivering Member fulfills its ACATS delivery obligation, then its short position is cancelled, and the debit for the mark is offset by a credit. Likewise, upon receipt of the securities by the Receiving Member, the Receiving Member's long position is offset, and the credit for the mark is offset by the debit. The net result is a "free" transfer of securities because no money is paid by either the Delivering Member or Receiving Member.

For transactions processed through CNS, NSCC normally becomes the counter party to the transaction and guarantees settlement.<sup>9</sup> However, a CNS ACATS transfer is not guaranteed for a party that fails to pay any portion of its money settlement obligation on settlement date.<sup>10</sup> In this circumstance, NSCC may reverse uncompleted ACATS items and any associated debits or credits calculated using the marking process described above would be eliminated.

Currently, ACATS transfers settled through CNS are fungible with all other CNS activity. The CNS system does not distinguish between ACATS transactions and other transactions,

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<sup>9</sup> Pursuant to Addendum K of its Rules, NSCC generally guarantees the completion of Continuous Net Settlement ("CNS") and Balance Order trades that reach the later of midnight of T+1 or midnight of the day they are reported to Members. Shortened process trades, such as same-day and next-day settling trades, are guaranteed upon comparison or trade recording processing.

<sup>10</sup> This includes failure by a Member to pay a mark-to-market charge.

which means that CNS ACATS receives and delivers are netted with guaranteed settling trades in the same securities. Pursuant to this proposal, NSCC would begin tracking ACATS receive and deliver obligations in CNS, and CNS allocations would be applied to ACATS receive and deliver obligations for a Member in a security before satisfying another obligation in the same security.<sup>11</sup> At the end of each processing day, CNS ACATS fails would continue to be marked to the full-market value and netted with all other CNS obligations under NSCC's Rules.

In the event of a Member failure, NSCC would use this proposed automated tracking capability to differentiate between completed and uncompleted CNS ACATS transactions. In a failure to settle situation, NSCC would therefore be able to reverse pending ACATS obligations for uncompleted transfers of a failing Member while still allowing assets associated with completed ACATS transfers to remain with the Receiving Member. NSCC believes this would help maximize CNS-related transfers of customer accounts to new firms.

An ACATS transfer of a failing Member would be deemed uncompleted if the failing Member is a Delivering Member and it failed to deliver to CNS all or a portion of the securities associated with the ACATS transfer. If the failing Member is a Receiving Member and it failed to receive all or a portion of the securities associated with the ACATS transfer from CNS, then the transfer would likewise be deemed uncompleted. In either case, if the Delivering Member makes a partial delivery of securities to CNS then the transfer would be deemed completed for the amount of securities received from CNS by the Receiving Member to the extent that amount does not exceed the amount delivered to CNS by the Delivering Member. The transfer would be deemed uncompleted as to any remaining securities beyond that amount, and only the

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<sup>11</sup> This includes a trade-related obligation.

uncompleted portion of the item would be subject to reversal. Transfers would also be deemed uncompleted when the failing Member is the Delivering Member and it has a flat or overall long CNS position or when the failing member is the Receiving Member and it has a flat or CNS short position.

In the event a Delivering Member and Receiving Member fail on the same settlement day and have an ACATS transfer obligation between them, any transfer deemed uncompleted for the Delivering Member would also be deemed uncompleted for the Receiving Member. NSCC would notify the affected Members of the details associated with the assets subject to the reversal and the affected Members would have to reestablish customer positions accordingly.

## 2. Possession and Control Requirements

To facilitate the compliance of Members with their securities possession and control requirements in ACATS transfers processed through CNS, NSCC proposes modifying its Rules to clarify that it does not maintain a lien over ACATS assets delivered to a Receiving Member through CNS.

## 3. Amendments to Rules and Procedures

To provide for the modifications to ACATS described in this filing, NSCC proposes amending its rules as described in the summaries below. The proposed changes to NSCC's Rules and Procedures can be found in Exhibit 5 to proposed rule change SR-NSCC-2010-05 at [http://www.dtcc.com/downloads/legal/rule\\_filings/2010/nsc/2010-05.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2010/nsc/2010-05.pdf).

### (a.) Amend Rule 18 (Procedures for When NSCC Declines or Ceases to Act)

Section 7 of Rule 18 (Procedures for when the Corporation Declines or Ceases to Act) provides that NSCC maintains a lien on all property placed in its possession by a Member as security for any and all liabilities of that Member to NSCC. An existing exception to this rule is

where such a lien would be prohibited under Commission Rules 8c-1 and 15c2-1. NSCC proposes modifying this section to clarify that it does not maintain a lien on ACATS assets that have been delivered to a Receiving Member through CNS.

(b.) Procedure VII (CNS Accounting Operation)

NSCC proposes modifying Procedure VII to provide for the tracking of customer transfers by stating that deliveries of a particular security through CNS would be designated to apply to a Member's ACATS receive and deliver obligations before satisfying another obligation, such as a trade-related obligation of that Member. In addition, the modified language would indicate that this designation would be provided to the Member's Designated Depository to facilitate its processing of the item.

(c.) Rule 50 (ACATS)

NSCC would amend Rule 50 to clarify that NSCC may reverse uncompleted ACATS items when either the Delivering or Receiving Member failed to meet its settlement obligation to NSCC. In addition, this Rule would be revised to note that in the event of such a reversal of uncompleted CNS ACAT obligations, NSCC would make files available to each Member to show each open security position due to settle that day that would be subject to the reversal as well as such other information as NSCC may deem advisable. The proposed change also includes a technical correction to clarify that ACATS transactions enter the CNS Accounting Operation on the day before Settlement Date (SD-1), rather than T+1.

NSCC proposes implementing the changes proposed in this filing during the third quarter of 2010 and advising Members of the implementation date through issuance of NSCC Important Notices.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>12</sup> and the rules and regulations thereunder because the proposed modifications would facilitate NSCC's prompt and accurate clearance and settlement of securities transactions by implementing a tracking mechanism to distinguish ACATS activity from other items processed through CNS and by clarifying that NSCC does not maintain a lien on ACATS assets delivered to a Receiving Member through CNS.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would 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.

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 the proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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<sup>12</sup> 15 U.S.C. 78q-1.

#### 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 Commissions 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-2009-05 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-NSCC-2010-05. 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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, N.E., Washington, D.C. 20549-1090, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings will also be available for inspection and copying at the

principal office of the NSCC and on NSCC's Web site at

[http://www.dtcc.com/downloads/legal/rule\\_filings/2010/nsc/2010-05.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2010/nsc/2010-05.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-2009-05 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>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).