

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63005; File No. SR-NSCC-2010-10)

September 29, 2010

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to clarify its Rules & Procedures Regarding its Alternative Investment Product Service

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on September 20, 2010, the 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 prepared primarily by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(4) thereunder³ so that the proposal was effective upon filing with the Commission. 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 Substance of the Proposed Rule Change

The proposed rule change amends NSCC’s rules to clarify that an Alternative Investment Product (“AIP”) Service prospective member is not required to designate a settling bank in order to become an AIP member.

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(4).

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 such statements.

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

1. AIP Service

In 2007, NSCC filed a rule change with the Commission that established the AIP Service, which is a processing platform for alternative investment products such as hedge funds, fund of hedge funds, commodities pools, managed futures, and real estate investment trusts.⁴ The AIP Service provides for settlement of related payments ("AIP Payments") such as subscriptions and redemptions, activity, distributions, and commissions for AIPs. The AIP Service also supports communication of information and settlement of AIP Payments between the AIP Manufacturer⁵ and the AIP Distributor⁶ to facilitate processing of subscriptions and purchases, tenders and redemptions, dividends and distributions, commissions and fees, positions reporting, product information, account maintenance, automated transmission of imaged documents, and such other services as NSCC may determine from time to time. AIP Members may transmit data in connection with transactions for which the payments are made outside of NSCC or are made

⁴ Securities and Exchange Act Release No. 57813 (May 12, 2008), 73 FR 28539 (May 16, 2008).

⁵ NSCC Rule 53 defines an AIP Manufacturer as an AIP Member acting on behalf of or under authority of the sponsor, general partner, or any other party responsible for the creation or manufacturing of an Eligible AIP Product.

⁶ NSCC Rule 53 defines an AIP Distributor as an AIP Member acting on behalf of or under authority of a customer or other investor in an Eligible AIP Product, or otherwise as the contra-side to an AIP Manufacturer in a transaction (including information processing) with an AIP Manufacturer.

through NSCC at their option.

2. AIP Settlement

Prior to this rule change, NSCC Rule 53, Section 7, paragraph (h), provided that unless “otherwise permitted by [NSCC], each AIP Member shall appoint an AIP Settling Bank for the purpose of settling with [NSCC] on behalf of the AIP Member pursuant to an AIP Settling Bank Agreement.” This settlement bank provision was implemented in the initial AIP Service rule filing to accommodate the stringent settlement rules implemented for the AIP Service. AIP settlement is segregated from all other NSCC settlement obligations and is settled on a gross debit/gross credit basis. In other words, each AIP Service participant must fully fund its debits before receiving its credit. In the event of a failure, NSCC does not fund the credits but rather begins the AIP reversal process. The AIP Service’s prefunded settlement mitigates NSCC’s risk. This settling bank provision was also included in the original AIP Service filing because participants were initially required to settle all NSCC invoices with their settlement obligation.

3. Clarification of Settling Bank Provision in Rule 53

Since the implementation of the AIP Service, a significant number of prospective participants view its reporting functionality as a key first step in use of the AIP Service. These AIP prospects have expressed their interest in becoming AIP members in order to participate in the transmission of AIP Data but not the settling functions of the AIP Service.⁷

In response to this feedback, NSCC has developed a functionality that can designate AIP Service members as “non-settling” members that use the AIP Service for messaging only.

⁷ NSCC Rule 53 provides that “AIP Data transmitted through the AIP Service may include data relating to subscriptions and purchases; redemptions, withdrawals and tender offers; commissions and other fees; distributions; exchange transactions; transfers; position reporting; product information; account maintenance, valuation, and activity and such other data as may be established by the Corporation from time to time.”

Position and Activity-Distribution and Commission are typically “non-settling,” and strictly reporting functions. Requiring these prospective participants to designate a settling bank simply for payment of NSCC bills is a hindrance to product adoption and is cost prohibitive.

Additionally, the current list of NSCC settling banks accepting new clients is limited, and those settling banks willing to accept new settlement business have requested large monthly fees from the AIP prospects.

The AIP Service has now been appropriately configured to allow for prospective members to apply for membership without designating a settling bank. If a participant is established by NSCC’s Account Administration department on the Entity Master File (“EMF”) without a settling bank’s ABA number, EMF notifies the AIP Service that the participant is non-settling. The AIP Service retains a table of the non-settling participants and validates all settlement files created by the application against the table. If a participant without a settling bank erroneously indicates settlement, no settlement file will be created or sent to settlement. The transaction will continue through normal AIP processing as non-settling.

AIP Service participants that do not intend to use its settling function will no longer be required to settle their NSCC invoices in their settlement obligations. Those participants that are designated “non-settling” members will be permitted to use alternative means of payment as designated from time to time by NSCC. Current methods of payment include DTCC ePayment for NSCC Invoices (which allows participants without a settling bank to authorize payment of NSCC Invoices through debit to an ACH-accessible commercial account at a US bank) or credit card.

4. Implementation Time Frame

NSCC will advise its members of the changes to the Rule 53 clarification that settling

bank designation is not a requirement for AIP Service membership through the issuance of an NSCC Important Notice.

NSCC states that Section 17A(b)(3)(F) of the Act⁸ requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. NSCC believes that this proposed rule change, which seeks to clarify NSCC Rule 53, will remove an impediment to the AIP Service membership process.

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

NSCC has not solicited or received written comments relating to the proposed rule change. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(4)¹⁰ thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission may

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ Above note 2.

¹⁰ Above note 3.

summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. Please include File No. SR-NSCC-2010-10 on the subject line.

Paper comments:

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

All submissions should refer to File No. SR-NSCC-2010-10. 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 Room, 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 filing also will be available for inspection and copying at NSCC's principal office and on NSCC's Web site at http://www.dtcc.com/legal/rule_filings/nsc/2010.php. 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 submission should refer to File No. SR-NSCC-2010-10 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.¹¹

Elizabeth M. Murphy
Secretary

¹¹ 17 CFR 200.30-3(a)(12).

