

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69571; File No. SR-NSCC-2013-05)

May 14, 2013

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, to Require that All Locked-in Trade Data Submitted to It for Trade Recording be Submitted in Real-time

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 30, 2013, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by NSCC. On May 14, 2013, NSCC filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified, from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

NSCC is proposing to modify its Rules to require that all locked-in trade data submitted to NSCC for trade recording be submitted in real-time, as defined below, and to prohibit pre-netting and other practices that prevent real-time trade submission.

II. Clearing Agency’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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, NSCC modified Exhibit 5 to the original proposed rule change filing to correct a typographical error in the text of its Rules & Procedures (“Rules”) related to the proposed rule change.

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.⁴

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

1. Purpose

The purpose of the proposed rule change is for NSCC to modify its Rules to require that all locked-in trade data submitted to NSCC for trade recording be submitted in real-time,⁵ and to prohibit pre-netting and other practices that prevent real-time trade submission.

According to NSCC, the majority of all transactions processed at NSCC are submitted on a locked-in basis by self-regulatory organizations (“SROs”) (including national and regional exchanges and marketplaces) and Qualified Special Representatives (“QSRs”).⁶ Currently, NSCC data reveals that all exchanges⁷ and some QSRs submit trades executed on their respective markets in real-time, representing approximately 91% of the locked-in trades

⁴ The Commission has modified the text of the summaries prepared by NSCC.

⁵ The term “real-time,” when used with respect to trade submission, will be defined in Procedure XIII (Definitions) of NSCC’s Rules as the submission of such data on a trade-by-trade basis promptly after trade execution, in any format and by any communication method acceptable to NSCC.

⁶ QSRs are NSCC Members that either (i) operate an automated execution system where they are always the contra side of every trade, (ii) are the parent or affiliate of an entity operating such an automated system, where they are the contra side of every trade, or (iii) clear for a broker-dealer that operates such a system and the subscribers to the system acknowledge the clearing Member’s role in the clearance and settlement of these trades.

⁷ One executing market with very low trade volume does not yet submit trades in real-time.

submitted to NSCC today. The proposed rule change would require that all locked-in trades submitted for trade recording by SROs and QSRs be submitted to NSCC in real-time.⁸

NSCC is also proposing to prohibit practices that preclude real-time submission, such as pre-netting. Typically, pre-netting is done on a bilateral basis between a QSR and its customer, both NSCC Members. Any pre-netting practices – whether in the form of “summarization” (i.e., technique in which the clearing broker nets all trades in a single CUSIP by the same correspondent broker into fewer submitted trades), “compression” (i.e., technique to combine submissions of data for multiple trades to the point where the identity of the party actually responsible for the trades is masked), netting, or any other practice that combines two or more trades prior to their submission to NSCC (collectively, “pre-netting”) – prevent the submission to NSCC of transactions on a trade-by-trade basis, and cause submitting firms to delay submission of their trades. According to NSCC, these practices disrupt NSCC’s ability to accurately monitor market and credit risks as they evolve during the trading day. Therefore, NSCC’s proposal will prohibit pre-netting activity on the part of entities submitting original trade data on a locked-in basis.⁹ The rules of NSCC’s affiliate Fixed Income Clearing Corporation (“FICC”) currently

⁸ NSCC is not at this time modifying Procedure III (Trade Recording Service (Interface Clearing Procedures)) of its Rules, so files submitted to NSCC by The Options Clearing Corporation (“OCC”) relating to option exercises and assignments (Procedure III, Section D – Settlement of Option Exercises and Assignments) will not be required to be submitted in real-time. OCC’s process of assigning option assignments is and will continue to be an end-of-day process.

⁹ Trades executed in the normal course of business between a Member that clears for other broker-dealers, and its correspondent, or between correspondents of the Member, which correspondent(s) is not itself a Member and settles such obligations through such clearing Member (i.e., “internalized trades”) are not required to be submitted to the Corporation and shall not be considered to violate the pre-netting prohibition.

prohibit such activity, and this proposed rule change would align NSCC's trade submission rules with those of FICC.¹⁰

NSCC does not expect the proposed rule changes to impact trade volumes significantly. According to NSCC, the majority of trades are currently being submitted to NSCC in real-time on a trade-by-trade basis, and NSCC is operationally capable of managing trade volumes that are multiple times larger than the historical peak volumes. NSCC's trade capture application, Universal Trade Capture, provides contract information to Members in real-time. Receipt of trade data in real-time will enable NSCC to record, and report to Members, trade data as it is received by the marketplaces, thereby promoting intra-day reconciliation of transactions at the Member level.

In the wake of recent industry disruptions, industry participants have been focused on developing controls to address the risks that arise from technology issues. NSCC believes that technology issues that could potentially cause significant disruptions and losses have become more likely in the securities markets that have leveraged technology advances to move to higher frequency trading environment. A comment letter submitted to the Commission in advance of the its Technology and Trading Roundtable, held in October 2012, and signed by a number of industry participants including SROs, broker-dealers, and buy-side firms, supported this

¹⁰ See, e.g., GSD Rule 11 (Netting System), Section 3 ("All trade data required to be submitted to the Corporation under this Section must be submitted on a trade-by-trade basis with the original terms of the trades unaltered. A Member or any of its Affiliates may not engage in the Pre-Netting of Trades prior to their submission to the Corporation in contravention of this section. In addition, a Member or any of its Affiliates may not engage in any practice designed to contravene the prohibition against the Pre-Netting of Trades."), http://dtcc.com/legal/rules_proc/FICC-Government_Security_Division_Rulebook.pdf. See also Order Granting Approval of a Proposed Rule Change Relating to Trade Submission Requirements and Pre-Netting, Release No. 34-51908 (June 22, 2005), 70 FR 37450 (June 29, 2005).

proposed rule change as a crucial component of the industry controls that could increase market transparency and ultimately mitigate risks associated with high-frequency trading and related technology.¹¹

As a central counterparty, NSCC contributes to market stability by interposing itself between counterparties to financial transactions and thereby reducing the risk faced by market participants. NSCC believes the proposed rule change will align NSCC's Rules with the trend in risk mitigation to move towards real-time trade submission and processing. NSCC believes the proposal will also support NSCC's critical role in maintaining financial stability by reducing the operational risk that results from locked-in trade data not being submitted to NSCC in real-time, particularly from firms that delay trade submission so as to pre-net their data. For example, receipt of locked-in trade data on a real-time basis will permit NSCC's risk management processes to monitor trades closer to trade execution on an intra-day basis, and identify and risk manage any issues relating to excessive exposure earlier in the day. NSCC will also be able to provide safe storage for real-time trade data, mitigating the risk that an event that occurs after trade execution and disrupts trade input will significantly delay completion of those trades or may even cause trade data to be lost.

While the proposed rule change will require some QSRs to enhance their trade submission systems, and could cause increased fees for those NSCC Members that pre-net their trade data so as to reduce clearance fees, NSCC believes the significant risk mitigation benefits of this proposal outweigh any temporary burdens or increased costs that may result. As a user-owned industry utility and a registered clearing agency, NSCC believes it must appropriately

¹¹ Comment Letter signed by NYSE Euronext dated Sept. 28, 2012 (<http://www.sec.gov/comments/4-652/4652-17.pdf>).

allocate the costs of its services in order to maintain a fee schedule that is fair and equitable among its participants. According to NSCC, enabling Members to persist in pre-netting practices permits those participants to evade paying their fair share of NSCC's costs, rendering NSCC's fee schedule, as currently applied, inequitable to the firms for whom trades are submitted in real-time without any pre-netting. Further, over the past few years, NSCC has adjusted its fee schedule to give more weight to "value transacted" and less weight to "units processed," which NSCC believes will reduce the impact of this rule change on Members' fees.

Implementation Timeframe

Pending Commission approval of this proposed rule change, Members will be advised of the implementation date through issuance of an NSCC Important Notice. The proposed rule change will not be implemented earlier than seven (7) months from the date of Commission approval.

Proposed Rule Changes

NSCC proposes to amend Rule 7 (Comparison and Trade Recording Operation), Procedures II (Trade Comparison and Recording Service), IV (Special Representative Service), and XIII (Definitions) of its Rules in order to require that all locked-in trades submitted for trade recording by SROs and QSRs be submitted on a real-time basis, and to make clear that locked-in trade data from SROs and QSRs must be submitted on a trade-by-trade basis, in the original form in which they are executed, and that pre-netting and similar practices are prohibited.

In light of these proposed changes, Addendum N (Interpretation of the Board of Directors: Locked-In Data From Qualified Special Representatives) of NSCC's Rules will be deleted, as it will be no longer relevant.

2. Statutory Basis

NSCC believes that the proposed rule change is consistent with the requirements of the Act, specifically Section 17A(b)(3)(F),¹² and the rules and regulations thereunder because it will reduce operational, market, and credit risk to both NSCC and its Members and promote the prompt and accurate clearance and settlement of securities transactions.

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

NSCC believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The submission requirements proposed in this filing will be applied to all locked-in trades submitted to NSCC, regardless of the type of submitting entity. According to NSCC the majority of NSCC's trade volume is currently submitted to NSCC in real-time and the proposed rule change reflects an industry trend for risk mitigation to move towards real-time trade submission and processing. The proposed rule change facilitates the orderly clearance and settlement of securities transactions by addressing the operational risks that are caused by the practices it seeks to prohibit, as outlined in Item II(A) above. As such, according to NSCC, the business continuity and risk-mitigation benefits of the proposed rule change render not unreasonable or inappropriate any burden on competition that such submission requirements could be regarded as imposing.

¹² 15 U.S.C. 78q-1(b)(3)(F).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

While written comments relating to the proposed rule change have not yet been solicited with respect to this filing, the proposed rule changes described herein were subject of a prior rule filing that was filed with the Commission in 2006 as File No. SR-NSCC-2006-04 ("2006 Filing").¹³ NSCC received a number of public comments to the 2006 Filing. NSCC submitted a public response to each of the comments in 2006.¹⁴ The 2006 Filing was officially withdrawn on December 29, 2011.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

¹³ Release No. 34-53742 (Apr. 28, 2006), 71 FR 26804 (May 8, 2006).

¹⁴ Response Letter from NSCC dated Aug. 18, 2006 (<http://www.sec.gov/comments/sr-nsc-2006-04/nsc200604-9.pdf>).

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.¹⁵ The clearing agency shall post notice on its website of proposed changes that are implemented.

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-2013-05 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 No. SR-NSCC-2013-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁵ NSCC also filed the proposals contained in this proposed rule change as an advance notice (File No. SR-NSCC-2013-805) pursuant to Section 806(e)(1) of the Clearing Supervision Act and Rule 19b-4(n)(1)(i) thereunder. 12 U.S.C. 5465(e)(1); 17 CFR 240.19b-4(n)(i). Proposed changes filed under the Clearing Supervision Act may be implemented either: at the time the Commission notifies the clearing agency that it does not object to the proposed change and authorizes its implementation, or, if the Commission does not object to the proposed change, within 60 days of the later of (i) the date that the advance notice was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. 12 U.S.C. 5465(e)(1)(G). The Commission will consider all public comments received on these proposed changes regardless of whether the comments are submitted to File No. SR-NSCC-2013-05 or File No. SR-NSCC-2013-805.

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website 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 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's website at http://dtcc.com/legal/rule_filings/nsc/2013.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 submissions should refer to File No. SR-NSCC-2013-05 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.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).