

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72223; File No. SR-NSCC-2014-04)

May 22, 2014

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change to Effect Processing Enhancements to the NSCC Automated Customer Account Transfer Service

I. Introduction

On March 27, 2014, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposed rule change SR-NSCC-2014-04 (“Proposed Rule Change”)³ to implement processing enhancements⁴ to NSCC’s Automated Customer Account Transfer Service (“ACATS”).⁵ The Proposed Rule Change was published for comment in the Federal Register on April 11, 2014.⁶ The Commission did not receive comments on the Proposed Rule Change. This order approves the Proposed Rule Change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Defined terms not defined herein have the meaning set forth in NSCC’s Rules and Procedures (“Rules”), available at http://dtcc.com/~media/Files/Downloads/legal/rules/nsc_rules.ashx.

⁴ NSCC will announce the implementation of this Proposed Rule Change via an Important Notice to Members.

⁵ The Depository Trust Company (“DTC”) filed a corresponding proposed rule change with the Commission. See Release No. 34-71886 (Mar. 27, 2014), 79 FR 20260 (Apr. 11, 2014) (SR-DTC-2014-04) (“DTC Proposal”).

⁶ Release No. 34-71887 (Mar. 27, 2014), 79 FR 20290 (Apr. 11, 2014) (SR-NSCC-2014-04).

II. Description

A. Current ACATS Process

ACATS enables NSCC Members (“Members”) to automatically transfer customer accounts among themselves.⁷ A Member to whom a customer’s securities account is to be transferred (“Receiving Member”) may initiate the account transfer process by submitting a Transfer Initiation Request to NSCC. When the Member who is to deliver the customer’s securities account through ACATS (“Delivering Member”) accepts the request, NSCC will cause eligible securities in that account to enter NSCC’s Continuous Net Settlement Accounting Operation (“CNS”) prior to the settlement cycle on the day before Settlement Date. Securities that are not eligible for CNS but are eligible for settlement at DTC (“Non-CNS DTC-Eligible Securities”) may be settled either through another NSCC service or outside of NSCC, depending on the asset type.

In order to incentivize the Delivering Member to make delivery of the securities, the Delivering Member is charged with a money settlement debit and the Receiving Member with a money settlement credit (“Incentive Charges”). Incentive Charges are then reversed when the securities transfer is complete.

For ACATS transfers of CNS-eligible securities, NSCC tracks the receive and deliver obligations in CNS so that NSCC is able to reverse the uncompleted transfers of a Member that is party to the transfer but fails to meet its money settlement obligation to NSCC or NSCC ceases to act for such Member (collectively, “Fails to Settle”). However, if two or more Members Fail to Settle, then NSCC may not be able to identify completed versus uncompleted transfers because ACATS securities that settle via CNS are fungible with CNS’s other activity and are

⁷ ACATS is a non-guaranteed service and transfers are not subject to risk management by NSCC.

netted with the guaranteed trades in the same securities that settle in CNS. As a result, in such a scenario, NSCC may have to reverse all ACATS transfers relating to those Members, whether or not the transactions were completed, in order to eliminate the Incentive Charges.

For ACATS transfers of Non-CNS DTC-Eligible Securities, the Delivering Member that fails to make delivery of the securities (“Fails to Deliver”) will receive a money debit (i.e., an Incentive Charge) for the full value of the securities. However, NSCC does not track the completion of those transfers. Thus, if the Delivering Member ultimately Fails to Settle, NSCC will reverse the Member’s ACATS transfers in order to eliminate the associated money debit.

B. New ACATS Process

The Proposed Rule Change will create a new ACATS process (“ACATS Settlement Accounting Operation”) for both CNS-eligible and Non-CNS DTC-Eligible Securities that will operate outside of CNS. The initiation of an ACATS transfer will remain the same. However, all transfers through the ACATS Settlement Accounting Operation will be made without the application of Incentive Charges (i.e., the transfers will be made free-of-value). Additionally, applicable ACATS transfers will be aggregated into one receive and one deliver obligation per security, per Member. Those obligations will be processed through the Member’s corresponding receive or deliver subaccounts at NSCC, which NSCC will require each Member participating in the ACATS Settlement Accounting Operation to establish and maintain.⁸ NSCC will not net the obligations between a Member’s subaccounts.

Under the Proposed Rule Change, after NSCC receives securities from Delivering Members, NSCC will allocate those securities to Receiving Members. The allocation of these

⁸ An NSCC account at DTC will be established to accommodate processing of these transfers.

securities will be governed by an algorithm formulated by NSCC. To maximize customer account deliveries, NSCC will instruct DTC to deliver shares out of a Delivering Member's account to satisfy first the Delivering Member's ACATS obligations, and then the Delivering Member's outstanding CNS obligations.

The ACATS Settlement Accounting Operation will enable NSCC to track ACATS obligations at the Member level, so NSCC can identify and reverse, as necessary, any uncompleted ACATS transfers in the event that one or more Members Fail to Settle on the scheduled ACATS settlement date.⁹ An ACATS transfer of a Member that Fails to Settle will be deemed uncompleted if the Member is: (i) the Delivering Member and it has Failed to Deliver to NSCC all or a portion of the securities associated with the ACATS transfer, or (ii) the Receiving Member and it has failed to receive from NSCC all or a portion of the securities associated with the ACATS transfer ("Fail to Receive"). However, in either case, where the Delivering Member has made a partial delivery for an amount of the securities to NSCC ("Delivered Amount") the transfer will be: (i) deemed completed for any amount of the securities received from NSCC by the Receiving Member up to an amount not to exceed the Delivered Amount ("Received Amount"), and (ii) deemed uncompleted for any amount of the securities scheduled for delivery other than the Received Amount, in which case only the uncompleted portion of the obligation will be subject to reversal.

In the event that a Delivering Member and Receiving Member to the same ACATS transfer Fail to Settle on the same settlement day, then any transfer deemed uncompleted for the Delivering Member will also be deemed uncompleted as to the Receiving Member, and vice

⁹ The current process only provides for tracking of a single Member default for this purpose.

versa. NSCC will then notify firms with the details associated with the securities subject to the reversal and firms will need to reestablish customer positions accordingly.

The fact that deliveries will be made free-of-value in the new ACATS process will obviate any need to reverse completed transactions.¹⁰ Securities associated with completed ACATS transfers will remain with the Receiving Member, thus ensuring that customer account transfers to new firms are maximized.

If a scheduled securities delivery or receive through ACATS Settlement Accounting Operation for a transaction Fails to Deliver or Fails to Receive at the end of the day, but the corresponding Member has not Failed to Settle, NSCC will apply a funds settlement debit to the Delivering Member and a funds settlement credit to the Receiving Member prior to final settlement. For CNS-eligible securities, the money amount will be 100 percent of the CNS market value.¹¹ For Non-CNS DTC-Eligible Securities, the money amount will be 100 percent of the ACATS market value. When the Member makes final money settlement, the failed obligations will take one of two paths depending on whether they involve CNS-eligible or Non-CNS DTC-Eligible Securities.

For an ACATS obligation in CNS-eligible securities where there has been a Fail to Deliver or Receive but not a Fail to Settle, the obligation will enter the applicable Member's general CNS account. The obligation will then be netted with regular CNS processing. Because NSCC has collected the full value on the securities, NSCC will guarantee settlement for the obligations upon their inclusion in CNS.

¹⁰ DTC will inform NSCC through the DTC/NSCC interface as to when deliveries are complete.

¹¹ If a market price is unavailable, then NSCC will use the value provided by the Delivering Member.

For Non-CNS DTC-Eligible Securities, NSCC will provide instructions to both the Delivering Member and Receiving Member to settle the failed obligation directly with each other. These transactions will be automatically entered into NSCC's Obligation Warehouse system, if eligible.

The new ACATS process will also provide for "Level 1" delivery exemptions that will allow Members to indicate that deliver obligations in the ACATS Settlement Accounting Operation should not be automatically settled against their current DTC position. With respect to same day settling transactions, Members may select a standing exemption to permit all such short positions to be delivered. Additionally, during the daytime cycle, a Member may override the one-day settling exemption, as well as other exemptions entered by the Member the previous evening. To use this feature, the Member should prepare a Delivery Order ("DO") and submit it to DTC in the normal manner.

With this Proposed Rule Change, NSCC will also ensure that neither DTC nor NSCC will have a lien on securities delivered to a receiver as a result of an ACATS transfer. Because the new ACATS process will allocate shares to the Receiving Member via an algorithm that NSCC will establish for this purpose, as discussed above, DTC will credit the shares to the Receiving Members Minimum Amount ("MA") or non-lien/non-collateral account at DTC.

Final accounting reports for the ACATS Settlement Accounting Operation will be provided in conjunction with the final CNS accounting reports. However, reporting along with the CNS accounting reports will have no effect on the status of the reported ACATS transactions as non-guaranteed.

C. Elimination of Short Cover Charge and Long Allocation Reversals

An ACATS short cover charge is a dollar amount guaranteed by NSCC to DTC for the value of securities delivered from a DTC Participant account to NSCC for CNS processing by NSCC. NSCC's guaranty to DTC for the short cover charge will no longer be applicable because, under the new ACATS process, the deliveries no longer present risk to DTC. As such, DTC will delete provisions in its procedures related to ACATS short cover charges.¹² No change to NSCC's Rules is required.

At NSCC, under the current ACATS process, long allocations may be reversed if the NSCC Member Fails to Settle. Because ACATS transfers under the new process will not generate any funds settlement obligations, this reversal is eliminated. As such, DTC will delete provisions in its procedures describing the reversal of ACATS long allocations.¹³ No change to NSCC's Rules is required.

III. Discussion and Commission Finding

Section 19(b)(2)(C) of the Act¹⁴ 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 Act¹⁵ 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

¹² See DTC Proposal, 79 FR 20260.

¹³ Id.

¹⁴ 15 U.S.C. 78s(b)(2)(C).

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

custody or control of the clearing agency or for which it is responsible.”¹⁶ The Commission finds that the Proposed Rule Change is consistent with these requirements because the new ACATS processing system will enhance NSCC’s ability to track receive and deliver obligations associated with ACATS activity and preclude the reversal of completed ACATS transfers in the event that multiple Members Fail to Settle.

Further, Commission Rules 17Ad-22(d)(3)¹⁷ and 17Ad-22(d)(12)¹⁸ require that registered clearing agencies establish, implement, maintain and enforce written policies and procedures reasonable designed to “[h]old assets in a manner that minimizes risk of loss or of delay in its access to them...”¹⁹ and “[e]nsure that final settlement occurs no later than the end of the settlement day; and require that intraday or real-time finality be provided where necessary to reduce risks.”²⁰

Currently, if two or more Members Fail to Settle, NSCC may need to reverse all ACATS transactions relating to those Members, whether or not the transactions are completed. The potential that NSCC may be required to reverse all transactions, including transactions that have already completed, may delay a Receiving Member’s ability to access the account being transferred and delay final settlement of the ACATS transfer. Under the Proposed Rule Change, NSCC will be able to identify and reverse only uncompleted ACATS obligations in the event of a multiple Member default, thus minimizing the risk of delayed access to settled ACATS

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ 17 CFR 240.17Ad-22(d)(3).

¹⁸ 17 CFR 240.17Ad-22(d)(12).

¹⁹ 17 CFR 240.17Ad-22(d)(3).

²⁰ 17 CFR 240.17Ad-22(d)(12).

transfers. As such, the Commission finds the Proposed Rule Change consistent with Rules 17Ad-22(d)(3)²¹ and 17Ad-22(d)(12).²²

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 Act²³ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NSCC-2014-04 be, and it hereby is, APPROVED.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

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Deputy Secretary

²¹ 17 CFR 240.17Ad-22(d)(3).

²² 17 CFR 240.17Ad-22(d)(12).

²³ 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).

²⁴ 17 CFR 200.30-3(a)(12).