

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-95437; File No. SR-NSCC-2022-011)

August 5, 2022

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Enhance National Securities Clearing Corporation 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 July 26, 2022, National Securities Clearing Corporation (“NSCC” or “Corporation”) 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 by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to NSCC’s Rules & Procedures (“Rules”) in order to enhance NSCC’s Automated Customer Account Transfer Service (“ACATS”), as described in greater detail below.<sup>5</sup>

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4).

<sup>5</sup> Terms not defined herein are defined in the Rules, available at [http://dtcc.com/~media/Files/Downloads/legal/rules/nsc\\_rules.pdf](http://dtcc.com/~media/Files/Downloads/legal/rules/nsc_rules.pdf).

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of modifications to NSCC's Rules to expand the "receiver delete" functionality in ACATS to additional products.

(i) Background

ACATS is a non-guaranteed service provided by NSCC that enables Members to effect transfers of customer accounts among themselves. ACATS complements Financial Industry Regulatory Authority ("FINRA") Rule 11870 ("FINRA Rule 11870") regarding customer account transfers, which requires FINRA members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames.<sup>6</sup> ACATS automates and standardizes procedures for the transfer of assets in a customer account, allowing Members to efficiently and automatically enter,

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<sup>6</sup> See FINRA Rule 11870, available at <https://www.finra.org/rules-guidance/rulebooks/finra-rules/11870>. NSCC also permits Qualified Securities Depositories (i.e., The Depository Trust Company ("DTC")) to utilize ACATS on behalf of their participants (e.g., DTC member banks) on a voluntary basis. See Section 1 of Rule 50, id.

review, and generate instructions to settle customer account transfers. The timing and procedures with respect to customer account transfers are intended to be consistent with the timing and processes set forth in FINRA Rule 11870.

Pursuant to NSCC Rule 50, an NSCC Member to whom a customer's account will be transferred (the "Receiving Member") initiates the transfer by submitting a transfer initiation request to NSCC, which contains the customer detail information that the NSCC Member who currently has the account (the "Delivering Member") requires to transfer the account.<sup>7</sup> The Delivering Member must either reject the customer account transfer request or submit detailed customer account asset data to NSCC. NSCC then provides a report detailing the customer account asset data to the Receiving Member,<sup>8</sup> who has one Business Day after receipt of the report to review the account and: (i) accept all assets; (ii) reject (or "delete") one or more assets, to the extent such a rejection is permitted by the Receiving Member's Designated Examining Authority ("DEA") (i.e., FINRA),<sup>9</sup> and allow the transfer of the remaining assets; (iii) request the Delivering Member to make adjustments to the customer account asset list; or (iv) reject the account, to extent such a rejection is permitted by NSCC or the Receiving Member's DEA.<sup>10</sup>

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<sup>7</sup> See Section 2 of Rule 50, supra note 5.

<sup>8</sup> See Section 7 of Rule 50, supra note 5.

<sup>9</sup> As discussed in further detail below, NSCC Rule 50 currently limits the type of assets that a Receiving Member may delete from the customer account asset data list in ACATS to MF/I&RS Products. NSCC proposes to expand this functionality to other assets that may be deemed "nontransferable assets" under FINRA Rule 11870.

<sup>10</sup> See Section 8 of Rule 50, supra note 5. Pursuant to FINRA Rule 11870(d)(8), a Receiving Member may reject a transfer of account assets in whole if the account is not in compliance with the Receiving Member's credit policies or minimum asset requirements. See supra note 6.

Once a customer account has been accepted by the Receiving Member, ACATS facilitates the settlements associated with the account transfer at the appropriate asset settling location (e.g., through the Continuous Net Settlement system (“CNS”) for CNS-eligible securities, DTC for securities otherwise eligible for DTC settlement services, Fund/SERV for eligible mutual fund products, the Insurance Processing Service (“IPS”) for annuities, or The Options Clearing Corporation for listed options).<sup>11</sup>

FINRA Rule 11870 acknowledges that some customer assets may not be transferred within the specified time frames to the extent that those assets are not readily transferable (a “nontransferable asset”). For purposes of FINRA Rule 11870, a nontransferable asset is any asset that is incapable of being transferred because it is: (i) an asset that is a proprietary product of the carrying member;<sup>12</sup> (ii) an asset that is a product of a third party (e.g., mutual fund/money market fund) with which the receiving<sup>13</sup> member does not maintain the relationship or arrangement necessary to receive/carry the asset for the customer’s account; (iii) an asset that may not be received due to regulatory limitations on the scope of the receiving member’s business; (iv) an asset that is a bankrupt issue for which the carrying member does not possess (which shall be deemed to include possession at a securities depository for the carrying member’s account) the proper denominations or quantity of shares necessary to effect delivery and no transfer agent is available to re-register the shares; (v) an asset that is an issue for which the proper denominations cannot be obtained pursuant to governmental regulation or the

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<sup>11</sup> See Section 14 of Rule 50, supra note 5.

<sup>12</sup> For purposes of Rule 50, a carrying member would be the Delivering Member.

<sup>13</sup> See Section 5 of Rule 50, supra note 5.

issuance terms of the product (e.g., foreign securities, baby bonds, etc.); or (vi) limited partnership interests in retail accounts.<sup>14</sup>

NSCC Rule 50 currently limits the type of assets that a Receiving Member may delete from the customer account asset data list in ACATS (the “receiver delete functionality”) to “MF/I&RS Products,”<sup>15</sup> which are comprised of Fund/SERV Eligible Fund assets<sup>16</sup> and/or I&RS Eligible Products.<sup>17</sup> As a result, certain customer assets that may also be deemed “nontransferable assets” under FINRA Rule 11870 are not currently included in the receiver delete functionality in ACATS and must be handled by a manual process outside of the automated ACATS system. For example, nontransferable alternative investment products that are the product of a third party, such as hedge funds, fund of funds, private equity, non-traded real estate investment trusts, and business development companies, may be submitted by the Delivering Member in the customer account asset list but cannot be removed using the receiver delete functionality in ACATS even though those products cannot be settled on an automated basis at one of the asset settling locations due to a lack of arrangements between the issuer of the product and the Receiving Member, which prevents such products from being held by at the Receiving Member. Instead, nontransferable alternative investment products included in an ACATS transfer generate a Receive and Deliver (“R&D”) ticket instructing firms to

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<sup>14</sup> See supra note 6.

<sup>15</sup> See Section 8 of Rule 50, supra note 5.

<sup>16</sup> Rule 1 defines the term “Fund/SERV Eligible Fund” to mean a fund or other pooled investment entity included in the list for which provision is made in Section 1.(c) of Rule 3, supra note 5.

<sup>17</sup> Rule 1 defines the term “I&RS Eligible Product” to mean an insurance product or a retirement or other benefit plan or program included in the list for which provision is made in Section 1.(d) of Rule 3, supra note 5.

complete the transfer outside of the ACATS process. This generally involves the Delivering Member generating physical transfer paperwork and sending it to the Receiving Member, often via the Envelope Settlement Service (“ESS”),<sup>18</sup> to deliver the asset. Some of these assets end up getting rejected by the Receiving Member because, for example, the necessary contracts are not in place with the issuer, or the asset is otherwise ineligible to be held in the receiving account. Depending on the operational structure of the firm, the manual process to return paperwork to the Delivering Member may involve multiple touchpoints and paperwork handoffs, resulting in processing delays.

(ii) Proposed Rule Change

NSCC proposes to modify Rule 50 to allow ACATS to process deletions for any customer assets that are (i) deemed to be nontransferable assets under FINRA Rule 11870 and (ii) permitted by NSCC. Specifically, NSCC would effectuate the proposed change by revising two statements in Section 8 of Rule 50 concerning the deletion process to replace references to “MF/I&RS Products” with the phrase “nontransferable assets as defined by the Receiving Member’s DEA and as permitted by the Corporation.” NSCC would also make non-substantive revisions to improve the clarity of Section 8 of Rule 50. Section 8 of Rule 50 currently provides, in part, that “[d]uring the one (1) Business Day time period, *only* the Delivering Member will be able to add, delete or change an item,

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<sup>18</sup> ESS is a non-guaranteed service of NSCC that facilitates the processing and settlement of physical security deliveries and associated charges through the use of envelope deliveries. Under this service, physical certificates may be processed for delivery at specified NSCC locations through the use of sealed envelopes accompanied by appropriate documentation (which, among other items, identifies the security, the receiving Member and the money value (if any) associated with the delivery). See Rule 9, supra note 5.

provided that the Receiving Member did not accelerate the transfer... other than with respect to MF/I&RS Products, which can also be deleted by the Receiving Member” (emphasis added). NSCC proposes to delete the word “only” because, as noted in the current and proposed rule, the Receiving Member may also utilize the receiver delete functionality for certain products within this one Business Day time period. NSCC would also replace the phrase “other than with respect to MF/I&RS Products, which can also be deleted by the Receiving Member” with “however, the Receiving Member may delete nontransferable assets as defined by the Receiving Member’s DEA and as permitted by the Corporation during the one (1) Business Day time period.” NSCC believes these proposed changes would improve the clarity and readability of the Rule.

NSCC would initially extend the receiver delete functionality to certain nontransferable alternative investment products that are the product of a third party, as discussed above. The proposed change would immediately address the need to delete alternative investment products directly within ACATS and provide necessary flexibility within NSCC’s Rules to apply the receiver delete functionality to other nontransferable assets beyond MF/I&RS Products in the future.<sup>19</sup> NSCC would maintain a list of nontransferable assets for which the receiver delete functionality is permitted and make the list available to its Members.<sup>20</sup>

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<sup>19</sup> NSCC would issue an Important Notice to inform Members of any new products eligible for the receiver delete functionality in ACATS.

<sup>20</sup> NSCC would initially maintain this list in the ACATS User Guide, which is available through the DTCC Learning Center. See <https://dtcclearning.com/products-and-services/equities-clearing/acats/acats-users.html>.

As discussed above, the ACATS service is intended to compliment FINRA Rule 11870 and provide timing and procedures for customer account transfers that are consistent with the timing and processes set forth in FINRA Rule 11870. NSCC Rule 50 currently limits the scope of assets that may be deleted from the customer account asset data list in ACATS to MF/I&RS Products, which prevents Members from processing the deletion of other nontransferable assets within the automated system. In the case of alternative investment products, this results in the need for manual and more lengthy processing of such assets through the R&D ticket process, which often involves generating physical transfer paperwork, the physical transmission of assets through ESS, and the ultimate rejection of nontransferable assets. Expanding the receiver delete functionality to additional nontransferable assets would reduce the cases in which transfer paperwork is mailed unnecessarily and enable the account owner to more immediately ascertain the transfer status of such assets. The proposed rule change would therefore eliminate the manual burdens and delays associated with transfers and rejections under the current R&D ticket process and would generally result in the same outcome (i.e., rejection) for those assets. Moreover, the proposed rule change would allow NSCC to apply the receiver delete functionality to any future assets determined by FINRA to be nontransferable under FINRA Rule 11870. NSCC therefore believes that the proposed rule change is designed to further the goals of standardizing customer account transfer procedures, reducing operating costs, and accelerating the timing for transaction settlements in the customer account transfer process.



## 2. Statutory Basis

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Section 17A(b)(3)(F) of the Act<sup>21</sup> requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The proposed rule change would provide necessary flexibility within NSCC's Rules to expand the receiver delete functionality in ACATS to nontransferable assets beyond MF/I&RS Products. The proposed change would reduce the burdens and delays associated with nontransferable assets that fall within the current manual R&D ticket process and bring greater efficiency and expediency to the account transfer process for those products as set forth above. NSCC therefore believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act.<sup>22</sup>

### (B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes would bring greater efficiency to the account transfer process by allowing ACATS participants to process deletions of additional nontransferable assets in an automated and expedited fashion. Allowing ACATS participants to process account transfers in a more efficient manner would result in client assets being transferred to the appropriate Members and DTC

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<sup>21</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>22</sup> Id.

participants more quickly. NSCC does not believe that the proposed rule change would have any impact on competition or materially affect the rights or obligations of NSCC Members because they would apply to all ACATS participants equally and effectively result in the same outcome as under the current manual process performed today.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at [tradingandmarkets@sec.gov](mailto:tradingandmarkets@sec.gov) or 202-551-5777.

NSCC reserves the right not to respond to any comments received.

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)<sup>23</sup> of the Act and paragraph (f)<sup>24</sup> of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2022-011 on the subject line.

Paper Comments:

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

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<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-NSCC-2022-011. 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 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 the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-NSCC-2022-011 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>25</sup>

J. Matthew DeLesDernier,  
Deputy Secretary.

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<sup>25</sup> 17 CFR 200.30-3(a)(12).