

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57609; File No. SR-NSCC-2008-01)

April 3, 2008

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule to Amend the Rules with Regard to the Formula Used within the Stock Borrow Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on March 18, 2008, the National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(4)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

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

The purpose of the rule change is to modify Addendum C of NSCC’s rules with respect to the formula used in NSCC’s stock borrow program to determine the order of priority among members from whom NSCC will borrow securities made available by those members.

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(4).

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.<sup>4</sup>

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

In the course of daily operations, NSCC's Continuous Net Settlement System ("CNS") may need more shares of a security than shares made available by member deliveries. In order to improve the efficiency of the clearing system in dealing with these situations, NSCC implemented automated stock borrow procedures to satisfy the need for shares that are not filled through normal deliveries from members.

NSCC members that wish to participate in the stock borrow program notify NSCC each day of the securities those members have on deposit at The Depository Trust Company ("DTC") that they intend to make available to NSCC through the stock borrow program. The stock borrow program has two separate cycles: the daytime cycle and the nighttime cycle.<sup>5</sup> Members choose whether to participate in the stock borrow program and whether to participate in one or both cycles.

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<sup>4</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>5</sup> The daytime and nighttime cycles are separate processes. Securities made available to be borrowed during the nighttime processing cycle are not borrowed during the daytime processing cycle and vice versa.

After NSCC processes regular deliveries, shares needed to satisfy CNS deliveries typically are borrowed from members who have made their securities available through the stock borrow program with the lending member's DTC position being debited for the number of shares loaned in the stock borrow program. Borrowed shares are recorded as a long position in the lending member's CNS subaccount until shares are delivered back to the lender.

Prior to this rule change, NSCC had used a formula to determine the order of priority among members from which NSCC would borrow shares. First, NSCC assigned each member a random allocation number for each security the member made available for borrowing. Then a factor was developed for each member by dividing the percentage of the member's average loans as they related to total NSCC borrowings by the percentage of the member's average fees paid for trade comparison, trade recording, and clearance as they related to the total of these fees for all members. Each member's random allocation number was multiplied by the factor to produce an adjusted random number per security for each member. Each potential borrow was then sequenced using the adjusted random number with the lowest adjusted random number having the first priority for borrowing.

NSCC is proposing to simplify the process by eliminating the formula and using a random allocation algorithm to determine the order of priority among members from which NSCC will borrow shares.<sup>6</sup> Using a random allocation algorithm to determine the order of priority in which NSCC will borrow securities made available by members within the stock

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<sup>6</sup> This random allocation algorithm is already used by NSCC to determine other priorities. NSCC uses random allocation algorithms routinely. For example, CNS uses a random allocation methodology whereby, after securities are received by NSCC from members making deliveries to CNS, they are then allocated to other members that are expecting receipt of those securities.

borrow program would make processing more consistent with other current processing routines already utilized by NSCC.

NSCC proposes to implement the changes set forth in this filing on March 28, 2008. Members will be advised of the implementation date through issuance of NSCC Important Notices.

The proposed rule change is consistent with Section 17A of the Act,<sup>7</sup> as amended, because it removes impediments to and perfects the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions.

(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

Written comments relating to the proposed rule change have not yet 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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(4)<sup>9</sup> thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that: (i) does not adversely

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<sup>7</sup> 15 U.S.C. 78q-1.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(4).

affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2008-01 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NSCC-2008-01. 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 inspection and copying in the Commission's Public Reference Section, 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 filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at

[http://www.dtcc.com/downloads/legal/rule\\_filings/2008/nsc/2008-01.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2008/nsc/2008-01.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-2008-01 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>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).