

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58694; File No. SR-NSCC-2008-07)

September 30, 2008

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change to Enhance Processing of Exchange-Traded Funds

I. Introduction

On July 22, 2008, the National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”), proposed rule change SR-NSCC-2008-07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ The proposed rule change was published for comment in the Federal Register on August 12, 2008.² No comment letters were received on the proposal. This order approves the proposal.

II. Description

The proposed rule change expands processing of shares in exchange-traded funds (“Index Receipts”) to allow for cash as a sole component of creations and redemptions and provides for an optional shortened processing cycle for creates and redeems of Index Receipts and their underlying components.

A. Current Process

Currently, on the day before trade date (“T-1”), an Index Receipt agent transmits files to NSCC that contain information regarding the underlying composition of Index Receipts for creates and redeems occurring the next business day.³ NSCC compiles the information that

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 58314 (Aug. 5, 2008), 73 FR 46958 (Aug. 12, 2008) [File No. SR-NSCC-2008-07]

³ NSCC’s current processing functions are set forth in Procedure II, Section H of NSCC’s Rules.

evening and provides members with a portfolio composition report listing the composition of Index Receipts eligible for processing. The report displays the proportionate amount of underlying stocks that compose each Index Receipt and contains a cash component, which is an estimation of accrued dividends and any necessary balancing amount.⁴ The portfolio information contained in this report is used for creation and redemption processing the next day, which is the Trade Date. On Trade Date, by such time as established by NSCC, the Index Receipt agent, acting on behalf of each member placing an Index Receipt order, will report to NSCC the number of Index Receipts created and redeemed that day. Transactions listed on the report are locked-in transactions between the Index Receipt agent and the member. The Index Receipt agent also will report the final cash amount and a transaction amount that represents the Index Receipt agent's transaction fee. On the night of Trade Date, NSCC transmits an Index Receipt instruction detail report to members that had activity on Trade Date. The report serves as the contract for the creation and redemption activity and lists the number of component shares that the member, depending upon the underlying shares' CNS eligibility, will deliver to or receive on settlement date ("T+3") from CNS or as an item allotted through the Balance Order Accounting Operation. On the night of Trade Date, each Index Receipt instruction is separated into its underlying stock components, and these components are processed through CNS or the Balance Order Accounting Operation and are incorporated into the normal equity clearance and settlement process. Unsettled positions in Index Receipts and their component securities are currently risk managed as ordinary activity and are guaranteed pursuant to the provisions of Addendum K of NSCC's rules.

⁴ The balancing amount is designed to compensate for any difference between the net asset value of the Index Receipt and the value of the underlying index. Among other reasons, a difference in value could result from the fact that an Index Receipt cannot contain fractional shares of a security.

B. Enhancements

For the past two years, demand for NSCC's create and redeem service has increased significantly each year with activity for Index Receipts with non-U.S. equity components increasing the most. As more fully described below, the proposed enhancements will allow members to create Index Receipts that (i) have underlying securities other than domestic equity securities for cash as consideration and (ii) will allow an optional shortened settlement cycle for creates and redemptions and their underlying components.

1. Expand the Index Receipt process to allow for Cash as Sole Component for Creations and Redemptions

Currently all component securities must be CNS eligible to qualify for NSCC's Index Receipt processing. Cash is used as a component only for accrued dividends and any balancing amount but is not used as a separate underlying component.

NSCC is expanding its Index Receipt processing to allow for creates and redemptions using cash as the sole underlying component. This enhancement will allow members and their agent banks to create and redeem Index Receipts whose underlying components are not currently eligible for processing at NSCC (for example, commodity Index Receipts). The Index Receipt agent would use the cash to purchase the components, the settlement of which would occur outside of NSCC.

2. T+1 and T+2 Settlement of Creations and Redemptions

NSCC currently supports the creation and redemption of Index Receipts with underlying components scheduled to settle on a T+3 basis. NSCC is expanding its Index Receipt processing to allow a member to create and redeem Index Receipts with a shortened settlement cycle. Currently, shortened settlement for standard equity CNS trades (e.g., next day settlement) is reported in the Consolidated Trade Summary and guaranteed on the night of T. NSCC then

collects Clearing Fund payments at 10 a.m. on T+1. NSCC is revising its processing to address the timing of the NSCC trade guarantee, trade processing, and Clearing Fund provisions for such shortened settlement Index Receipts.

Because next day settling trades are effectively guaranteed in the CNS night cycle prior to margining, NSCC currently uses a process that takes that uncertainty into consideration by collecting a “look-back” premium in the Clearing Fund calculation.⁵ Leveraging this existing practice for next-day settlement of creates and redeems would be cost-prohibitive based on the large number of “in kind” shares⁶ that are exchanged in this process.

NSCC is therefore delaying the processing of next day settling creates and redeems and their underlying components until the CNS day cycle on T+1.⁷ These transactions would be reported on the Second Supplemental Consolidated Trade Summary that is generally released mid-day. Delayed processing should allow NSCC ample time to collect Clearing Fund payments prior to guaranteeing the transactions and thus obviate the need for the look-back Clearing Fund premium.⁸

In addition, NSCC plans to implement a new fee for shortened-cycle creates and redeems as more fully described below.

⁵ In order to account for the risk of unknown positions, Risk Management performs a look-back calculation to estimate shortened settlement volumes and values. The shortened settlement component is added to a members’ Clearing Fund requirement for 21 days after each shortened settlement occurs.

⁶ Most Index Receipts are created and redeemed in units of 50,000. In other words, if a member were to create six units it would receive 300,000 shares of the Index Receipt securities.

⁷ The CNS day-cycle is typically run at 11:30 a.m. Component securities that are not CNS-eligible would be processed through the Balance Order Accounting Operation.

⁸ If Clearing Fund payments are not timely collected on T+1, creates and redeems would not be processed.

Therefore, NSCC proposes to amend its Rules as follows to provide for settlement of index receipt transactions on T+1 or T+2 on an optional basis:

- (a) Amendment of Addendum K regarding guarantee of next day settling index receipts

NSCC is amending Addendum K to provide that settlement of creates and redeems, including the underlying components, on a T+1 basis (including T+2 settling as-of creates and redeems submitted on T+1) will be guaranteed on Settlement Date when NSCC determines to complete processing for those items in the day cycle (normally, 11:30 a.m.), provided that the transaction is not removed from processing as described below.⁹

- (b) Amendment of Procedure II to allow for settlement on a shorter than T+3 basis.

NSCC is amending Procedure II, Section H to provide that: (i) the Index Receipt agent may elect for settlement of the creates and redeems on a T+1 or T+2 basis; (ii) as-of Index Receipt creates and redeems will only be accepted if submitted by the cut-off time designated by NSCC;¹⁰ (iii) NSCC reserves the right to remove Index Receipt transactions from processing in the event that the applicable member has not met a Clearing Fund call on settlement date; and (iv) next day settling creates and redeems (including T+2 settling as-of creates and redeems submitted on T+1) will be posted to the Second Supplemental Consolidated Trade Summary and processed in the day cycle of the CNS Accounting Operation.

⁹ In addition, the transaction must be submitted for recording by an Index Receipt agent by such cutoff time as designated by the NSCC (pursuant to Procedure II).

¹⁰ Submission of next-day settling creates and redeems will be required by such cut-off time on T.

(c) Amendment of Procedure XV (Clearing Fund Formula)

NSCC is amending Procedure XV to provide that creates and redeems of Index Receipts and the underlying components, will not be subject to the “20-day look back provision.”¹¹

(d) Amendment of Addendum A (Fee Structure)

The current fee for regular-way (T+3) settlement of creates and redeems is \$30 per create and redeem. To offset additional costs associated with shortened settlement processing, NSCC plans to implement a new fee of \$50.00 per create and redeem with a shortened settlement cycle.

C. Implementation timeframe

NSCC intends to implement the changes set forth in this filing in the third quarter of 2008. Members will be advised of the implementation date through issuance of NSCC Important Notices.

III. Discussion

The Commission finds 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. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),¹² which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change, which enhances the processing of exchange-traded funds, is consistent with those statutory obligations.

¹¹ The “20-day look back provision” provides for a charge based on the average of the member’s three highest aggregate calculated charges for daily “Specified (shortened cycle) Activity” measured over the most recent 20 settlement days.

¹² 15 U.S.C. 78q-1(b)(3)(F).

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 Act¹³ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (File No. SR-NSCC-2008-07) be, and hereby is, approved.¹⁵

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Acting Secretary

¹³ 15 U.S.C. 78q-1.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12).

