

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59044; File No. SR-NSCC-2007-08)

December 3, 2008

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change to Amend Membership Disqualification Criteria Rules

I. Introduction

On April 30, 2007, the National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) and on February 7, 2008, and on March 18, 2008, amended proposed rule change SR-NSCC-2007-08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ Notice of the proposal was published in the Federal Register on July 18, 2008.² The Commission received no comment letters. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of this filing is to amend the NSCC rules as they relate to membership disqualification criteria in an effort to create more uniformity between the rules of NSCC and the rules of NSCC’s affiliates, the Fixed Income Clearing Corporation (“FICC”) and The Depository Trust Company (“DTC”).

Currently, Addendum S of NSCC’s rules sets forth its policy as to standards relating to competence for membership. Addendum S includes both objective and subjective factors that may be considered by NSCC in its evaluation of an applicant or of the continued membership of a member. Going forward, NSCC seeks to amend its rules to only include those disqualification criteria that can be objectively monitored by Risk Management staff. For example, NSCC

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 58123 (July 9, 2008), 73 FR 41390.

proposes to delete from its rules specific references to criteria that may not be reported in a regulatory background check, such as an entity being subject to “heightened supervision” by a regulatory body. NSCC is proposing to include in its rules a general provision to permit consideration of events with respect to an applicant or member that may not be expressly mentioned but that may impact an applicant’s or member’s suitability as a member.

In addition, pursuant to NSCC’s current disqualification criteria, NSCC can consider the criteria with respect to a person or entity that has “significant managerial responsibility” over the applicant or member. Because it is not easily ascertainable as to what entities or individuals have “significant managerial responsibility” over a particular entity, NSCC is proposing to amend these provisions in the rules so that they are consistent with its internal surveillance procedures. Going forward, NSCC will extend the reach of certain disqualification criteria to persons and entities acting as “controlling management,” which will include those officers of the entity that are currently screened by Risk Management staff pursuant to internal procedures.

Specifically, NSCC’s disqualification criteria will now include:

- (i) An applicant or member being subject to statutory disqualification as defined in Section 3(a)(39) of that Act.³
- (ii) An applicant, member, or its controlling management making a misstatement of material facts; committing fraudulent acts; or being convicted of any of the crimes listed in the rule.

³ While this provision currently exists in the rules, it will be moved within the rules and will be grouped with all other disqualification criteria. The NSCC rules will also provide that applicants and members must notify NSCC if any member of its controlling management is or becomes subject to a statutory disqualification, as defined in Section 3(a)(39) of the Act.

(iii) An applicant, member, or its controlling management being permanently or temporarily enjoined from acting on behalf of a financial institution such as a broker-dealer.

(iv) An applicant or member's suspension or termination from participation in a national securities association, exchange registered under the Exchange Act, a self-regulatory organization, clearing agency, or securities depository.

Pursuant to the proposed change, NSCC will continue to be able to cease to act for a member when any of the factors in sections (i) through (iv) above are present. Addendum S will be struck entirely from the rules, and the listed disqualification criteria will be included in NSCC's proposed Rule 2A "Initial Membership Requirements."⁴

III. Discussion

Section 19(b) of the Act 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 the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to remove impediments to the perfection of a national system for the prompt and accurate clearance and settlement of securities transactions and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.⁵ The

⁴ NSCC has also filed, and the Commission has published notice of, proposed rule change SR-NSCC-2006-17 which seeks to reorganize NSCC's rules related to membership standards and membership requirements. Securities Exchange Act Release No. 58100 (July 3, 2008), 73 FR 39759 (July 10, 2008) [SR-NSCC-2006-17].

⁵ 15 U.S.C. 78q-1(b)(3)(F).

Commission believes that NSCC's rule change, which refines NSCC's rules and procedures with regard to applicants and members, is consistent with these obligations and in general will protect investors and the public interest.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the

proposed rule change (File No. SR-NSCC-2007-08) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon
Acting Secretary

⁶ 17 CFR 200.30-3(a)(12).

