

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-67947; File No. SR-NSCC-2012-06)

September 28, 2012

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change to Enhance the Default Pricing Methodology Used by NSCC's Automated Customer Account Transfer Service

I. Introduction

On August 7, 2012, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2012-06. The proposed rule change, which was filed pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² was published for comment in the Federal Register on August 22, 2012.³ The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change will amend Rule 50 of NSCC's Rules and Procedures to eliminate the use of a default pricing matrix to assign values to certain items transferred through NSCC's Automated Customer Account Transfer Service ("ACATS").

ACATS enables NSCC Members to effect automated transfers of customer accounts among themselves.⁴ Pursuant to Rule 50, an NSCC Member to whom a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 67673 (August 15, 2012), 77 FR 50736 (August 22, 2012).

⁴ ACATS complements Financial Industry Regulatory Authority ("FINRA") Rule 11870 regarding Customer Account Transfers, which requires FINRA members to use

customer's full account will be transferred ("Receiving Member") will initiate the transfer by submitting to NSCC a transfer initiation request, which contains the customer detail information that the NSCC Member in possession of the account ("Delivering Member") requires in order to transfer the account. Delivering Members that have neither rejected the account transfer request nor sought corrections to the request within the allotted time must submit to NSCC certain detailed customer account asset data.

For items transferred through ACATS that are not eligible to be processed through NSCC's Continuous Net Settlement ("CNS") system⁵ (and for CNS-eligible items that are designated to be delivered ex-CNS), NSCC will produce ACATS Receive and Deliver Instructions. These ACATS transfers then settle either outside of NSCC or through a separate service at NSCC.⁶ In order to incentivize the timely completion of ACATS transfers, at the start of the day on ACATS settlement date, the Delivering Member's NSCC money settlement account will receive a debit, or an incentive charge ("Incentive Charge"), equal to the aggregate market value of the items the Delivering

automated clearing agency customer account transfer services, and to effect customer account transfers within specified time frames.

⁵ CNS is an ongoing accounting system that nets each day's Settling Trades with the prior day's Closing Positions, producing net short or long positions per security issue for each Member. NSCC is always contraside for all positions. The positions are then passed against the Member's Designated Depository positions and available securities are allocated by book entry. This allocation of securities is accomplished through an evening cycle followed by a day cycle. Positions that remain open after the evening cycle may be changed as a result of trades accepted for settlement that day. To allocate deliveries in both the night and day cycles, CNS uses an algorithm based on priority groups in descending order, age of position within a priority group, and random numbers within age groups.

⁶ For example, non-CNS ACATS transfers may settle at (i) The Depository Trust Company ("DTC"), for DTC-eligible items; (ii) NSCC's automated ACATS-Fund/SERV interface, for eligible mutual fund assets; (iii) NSCC's ACATS-IPS interface, for eligible annuities; and (iv) the Options Clearing Corporation, where transfers in customer-options positions take place, for options.

Member is transferring through ACATS; the Receiving Member's NSCC money settlement account receives a credit in the same amount.⁷ Once delivery of an item is complete, the Incentive Charge associated with that item is effectively offset when the Receiving Member pays the Delivering Member for the transferred item. This Incentive Charge is intended to encourage the Delivering Member to make delivery of the item in a timely manner.⁸

Each item transferred through ACATS must be assigned a market value in order to calculate the Incentive Charge. CNS-eligible items being transferred through ACATS are assigned a market value through the CNS system. Non-CNS eligible items, however, are assigned a market value pursuant to NSCC Rule 50, which calls for a market value based on either (i) the price obtained from a pricing source, if available or, if a pricing source is not available, (ii) the greater of (a) the price in U.S. dollars assigned by the Delivering Member ("Submitter's Value"), which, in most cases, must be the current market value of the item,⁹ or (b) the value ascribed to such item pursuant to a default pricing matrix, as established from time to time by NSCC. The current default pricing matrix assigns a value to an item based on its "asset category type," as classified by the Delivering Member in the detailed customer account asset data submitted to NSCC. For example, the current default pricing matrix assigns equities a default price of \$1 per

⁷ Incentive Charges are not calculated for the transfer of options or annuities.

⁸ It also allows the Receiving Member to record the customer position on its books, regardless whether the item is actually delivered on settlement date. This process supports the requirements of FINRA Rule 11870.

⁹ See Section (d)(5)(A) of current FINRA Rule 11870, stating that a customer statement delivered in connection with a transfer instruction, "must include a then-current market value for all assets so indicated. If a then-current market value for an asset cannot be determined (*e.g.*, a limited partnership interest), the asset must be valued at original cost."

share, with a cap of \$20,000, and assigns U.S. government securities and U.S. government agency securities a default price of the face amount. The default pricing matrix was developed in close coordination with industry participants and the National Association of Securities Dealers shortly after the initial development of ACATS.

It has been observed that the default pricing matrix may, in some cases, overvalue items being transferred through ACATS. When this occurs, on ACATS settlement date the Delivering Member will be debited an Incentive Charge based on a higher value than the actual value of the item being transferred. Delivering Members will not receive the offset for this Incentive Charge until they deliver the related ACATS item. Therefore, a Delivering Member that does not deliver the ACATS item on ACATS settlement date will be required to pay the Incentive Charge associated with that item. If the default pricing matrix has overvalued an ACATS Incentive Charge, a Delivering Member that has failed to deliver the item will be faced with an unexpected inflated settlement charge on ACATS settlement date.

In order to reduce the risk of overcharging a Delivering Member, NSCC is proposing a rule change that will require NSCC to assign the Submitter's Value to items when the system cannot otherwise find a price for the security, thereby eliminating the use of the ACATS default pricing matrix altogether. Under the proposed rule change, in the case of non-CNS eligible items transferred through ACATS, NSCC will assign a market value to those items as either (i) the price obtained from a pricing source, if available or, if a pricing source is not available, the assigned market value will be (ii) the

price in U.S. dollars assigned by the Delivering Member (i.e., the Submitter's Value), which, in most cases, must be the current market value of the security.¹⁰

According to NSCC, this proposed rule change will reduce the risk that a non-CNS eligible item transferred through ACATS is assigned an inflated value based on its asset category, as it will require that the market value of these items be obtained either from a pricing source or from the Delivering Member.

III. Discussion

Section 19(b)(2)(C) of the Act¹¹ directs the Commission to approve a self-regulatory organization's proposed rule change if it determines that the 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 Act¹² requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of security transactions, and to assure the safeguarding of securities and funds that are in the custody or control of such clearing agency, or for which it is responsible.

The Commission concludes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC. The proposed rule change should ensure that NSCC members will no longer be surprised with inflated settlement charges in connection with ACATS transfers. By allowing NSCC members to gauge their liabilities more accurately, the proposed rule change will foster the prompt and accurate clearance and settlement of security transactions, and will

¹⁰ See note 9, supra.

¹¹ 15 U.S.C. 78s(b)(2)(C).

¹² 15 U.S.C. 78q-1(b)(3)(F).

assure the safeguarding of securities and funds in NSCC's custody or control, or for which NSCC is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, 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-2012-06) be, and hereby is, APPROVED.¹⁵

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

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Deputy 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).