

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80404; File No. SR-NSCC-2017-003)

April 7, 2017

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide for a New Data Repository Feature Called “Insurance Profile” for Transmission of Fee Data and Implement Fees in Connection with This Feature

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 31, 2017, National Securities Clearing Corporation (“NSCC”) 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)³ of the Act and subparagraphs (f)(2)⁴ and (f)(4)⁵ of Rule 19b-4 thereunder. 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 would amend NSCC’s Rules & Procedures (“Rules”) to broaden the scope of the Insurance & Retirement Processing Services (“I&RS”). The proposed rule change would enhance existing I&RS services to provide for a new data repository feature called “Insurance Profile” for transmission of data relating to fees,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ 17 CFR 240.19b-4(f)(4).

expenses, and Commissions (“Fee Data”) and implement fees associated with this proposed feature.⁶

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

NSCC is proposing to provide certain NSCC Members (as defined below) with a centralized, automated and standardized data repository to transmit and receive Fee Data relating to IPS Eligible Products.⁷ Such NSCC Members would include (i) insurance companies that are Insurance Carrier/Retirement Services Members (“Carriers”); and (ii) Carriers’ intermediaries, such as broker-dealers, banks and insurance agencies, that are Members, Mutual Fund/Insurance Services Members and Data Services Only Members that distribute participating Carriers’ insurance products (collectively, Distributors,” and, together with “Carriers,” collectively referred to herein as “NSCC Members”).

⁶ Capitalized terms not defined herein are defined in the Rules, available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/nsc_rules.pdf.

⁷ An “IPS Eligible Product” is defined in the Rules and includes such insurance products, retirement or other benefit plans, or programs that are identified by NSCC as eligible for processing through its I&RS. See Rule 1, supra note 6.

(i) **Background**

On April 6, 2016, the U.S. Department of Labor (“DOL”) issued new regulations (collectively, “DOL Fiduciary Rule”) regarding conflicts of interest in retirement investment advice.⁸ The DOL Fiduciary Rule generally expands the type of investment advice that is subject to fiduciary standards under the Employee Retirement Income Security Act of 1974 (“ERISA”).⁹ Generally, under the new DOL Fiduciary Rule, advisors subject to fiduciary standards will be limited in receiving certain compensation for providing investment advice. In connection with the DOL Fiduciary Rule, the DOL also introduced a new exemption and modified existing exemptions to allow institutions to engage in certain compensation and fee practices that might otherwise violate fiduciary standards under ERISA rules if the institutions meet, among other things, certain disclosure requirements relating to Fee Data. To satisfy the disclosure requirements, Distributors will need to disclose to their customers to whom the Distributors provide covered investment advice certain Fee Data that is generated by Carriers. For example, Distributors may need to disclose certain direct Carrier fees and expenses, such as

⁸ See Definition of the Term “Fiduciary”; Conflict of Interest Rule—Retirement Investment Advice, 29 C.F.R. 2509, 2510, and 2550 (2016).

⁹ Pub. L. No. 93-406, 88 Stat. 829 (codified in part as amended at 29 U.S.C. §§ 1001-1461 (1982)). On March 2, 2017, the DOL published a proposal that would extend the April 10, 2017 applicability date of the DOL Fiduciary Rule by 60 days. See Department of Labor, Definition of the Term “Fiduciary”; Conflict of Interest Rule—Retirement Investment Advice; Best Interest Contract Exemption ((Prohibited Transaction Exemption 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Prohibited Transaction Exemption 2016-02); Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, 84-24 and 86-128,” Proposed Rule, 82. Fed. Reg. 12319, (March 2, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-03-02/pdf/2017-04096.pdf>.

management fees, surrender charge rates, and standard commission schedule data (“Commission Schedule Data”),¹⁰ and certain indirect Carrier fees and expenses, such as third-party payments, revenue sharing, and marketing allowances.

Although I&RS currently provides communication links that connect participating Carriers and Distributors, these existing links do not provide Carriers with an efficient and centralized method to transmit Fee Data to Distributors. Through the existing links, Distributors would need to search for and retrieve information from multiple Carriers, and Carriers would need to respond to information requests from multiple Distributors, regarding the same IPS Eligible Products. In addition, Carriers would need to use multiple I&RS links to transmit all of the Fee Data required by the DOL Fiduciary Rule. As a result, such Fee Data would be transferred in different formats, depending on the method used to transmit the Fee Data. Further, in order to retrieve the Fee Data, Distributors would need to extract the Fee Data from multiple file types for each IPS Eligible Product.

¹⁰ Carriers publish schedules that list commission rates for products that Distributors earn upon the sale of the products. For example, a Carrier may provide that for the sale of a certain whole life policy, the Distributors will earn a commission of 100 percent of the premium for the first year. Carriers set the rates and then publish this data periodically. Those rates are then reviewed and approved by state regulatory authorities.

Therefore, NSCC developed the Insurance Profile functionality at the request of and in consultation with industry participants. The proposed Insurance Profile functionality would provide Carriers and Distributors with a secure, centralized portal to allow Carriers to place all of the requested Fee Data for each IPS Eligible Product into a new data repository in a standardized data format. In this regard, the Insurance Profile repository would enable Carriers to submit, and Distributors to retrieve, Fee Data relating to IPS Eligible Products in one centralized location. Having the Fee Data in a centralized repository would streamline the Fee Data transfer and retrieval process for Carriers and Distributors, and it would avoid the need to send and retrieve Fee Data to and from various sources and in different formats.

(ii) **Proposed Rule Changes**

NSCC proposes to enhance existing I&RS services to create a new feature within I&RS, called Insurance Profile, that would enable Carriers to transmit Fee Data to Distributors, or to otherwise supply and provide access to Fee Data using a centralized repository.¹¹ Insurance Profile would be an optional feature, and users would have access to the repository through either a full data subscription (“Full Data Subscription”) or a limited data subscription (“Limited Data Subscription”). The Full Data Subscription would allow for multiple intraday loading, storage, and transmission of all available Fee Data in the data repository. A Limited Data Subscription would allow for multiple

¹¹ Rule 57 generally provides that NSCC will not be responsible for the completeness or accuracy of any data transmitted between NSCC Members through I&RS, nor for any errors, omissions or delays which may occur in the absence of gross negligence on NSCC’s part, in the transmission of such data between NSCC Members. See Rule 57, Section 1(j), supra note 6. The proposed changes to Rule 57 would be subject to these limitations.

intraday loading, storage, and transmission of either (i) Commission Schedule Data, or (ii) all Fee Data other than Commission Schedule Data, at the user's choice. In addition, Distributors would have the ability to access the repository with a "User Web Interface Only" subscription. The User Web Interface Only subscription would allow Distributors to view and download Fee Data but would not include the ability to load, store, and transmit Fee Data using the data repository.¹²

NSCC Members would be provided with access to the repository based on their subscription type and in order to permit them to carry out their respective roles in the distribution of Fee Data. For example, Distributors subscribing to the User Web Interface Only subscription will only be able to download through web-based portal file downloads, while all other users would be able to download using mainframe-based file downloads. The file downloads would be functionally equivalent whether through mainframe-based file downloads or web-based portal file downloads, however, the mainframe-based file downloads would permit the downloading of more data at one time as compared to web-based portal file downloads.

NSCC also proposes to amend Addendum A of the Rules to include the fees for subscription to the Insurance Profile feature. The proposed fees would depend on whether the user has subscribed to a Full Data Subscription, a Limited Data Subscription, or a User Web Interface Only subscription. For a subscription that is not a User Web Interface Only Subscription, NSCC would charge (i) \$3,000 per month for a Full Data Subscription; and (ii) \$1,500 per month for a Limited Data Subscription. For a User Web

¹² Because Carriers would use the repository to load, transmit, and store Fee Data, Carriers would not have the option to subscribe to the User Web Interface Only, which only allows users to view and download Fee Data.

Interface Only Subscription, NSCC would charge Distributors (i) \$500 per month, plus a \$1.25 per CUSIP download transaction charge for a Full Data Subscription; and (ii) \$250 per month, plus a \$1.25 per CUSIP download transaction charge for a Limited Data Subscription.

In addition, because the Fee Data being placed in Insurance Profile is intended to be used to satisfy disclosure requirements and is not intended to be used to commercialize the Fee Data retrieved therefrom, the proposed rule change would make it clear that users may not use, distribute, transmit, or otherwise make available Fee Data retrieved from Insurance Profile as the basis for or as a part of a data product or service offered for commercial gain to any other person without the prior written consent of NSCC.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act¹³ requires, in part, that the Rules be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The proposed rule change would enhance NSCC Members' ability to access and retrieve Fee Data information in a standardized and automated format and in a secure, centralized location. By streamlining the ability of NSCC Members to transmit and retrieve Fee Data between each other, NSCC believes that the proposed rule change would foster cooperation and coordination with NSCC Members engaged in the clearance and settlement of securities, consistent with the requirements of Section 17A(b)(3)(F) of the Act.¹⁴

¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁴ Id.

Section 17A(b)(3)(D) of the Act¹⁵ requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. NSCC believes that the proposed rule change to Addendum A is consistent with this provision of the Act because the proposed fees would align with the cost of delivering the proposed Insurance Profile feature to NSCC Members, and such fees would be allocated equitably among the NSCC Members that subscribe for Insurance Profile. Therefore, by establishing fees that align with the cost of delivery of this feature and allocating those fees equitably among the subscribing NSCC Members, the proposed rule change would provide for the equitable allocation of reasonable dues, fees and other charges among its participants consistent with the requirements of Section 17A(b)(3)(D) of the Act.¹⁶

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

NSCC does not believe that the proposed rule change would have any adverse impact, or impose any burden, on competition because the proposed rule change would add an optional function to NSCC's services that would provide a more efficient method by which subscribing Carriers and Distributors may transmit and receive Fee Data. Therefore, as an optional feature available for subscription, the proposed rule change would not disproportionately impact any NSCC Members.

Moreover, because the proposed rule change would improve the efficiency by which subscribing NSCC Members may transmit Fee Data and satisfy their disclosure requirements, the proposed rule change may have a positive effect on competition among Carriers and Distributors. The proposed feature would provide these firms with a faster,

¹⁵ 15 U.S.C. 78q-1(b)(3)(D).

¹⁶ Id.

more streamlined method of transmitting and receiving Fee Data, and therefore would enable IPS Eligible Products to be marketed more quickly. Specifically, Distributors would have the ability to distribute IPS Eligible Products into the market to consumers more quickly because Distributors would have the ability to satisfy their Fee Data disclosure requirements with respect to such IPS Eligible Products on a timely basis using the proposed Insurance Profile.

(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. NSCC will notify the Commission of any written comments it receives.

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)¹⁷ of the Act and subparagraphs (f)(2)¹⁸ and (f)(4)¹⁹ 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.

¹⁷ 15 U.S.C 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(2).

¹⁹ 17 CFR 240.19b-4(f)(4).

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. Please include File Number SR-NSCC-2017-003 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NSCC-2017-003. 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; 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-2017-003 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.²⁰

Eduardo A. Aleman
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).