

Moreover, Ms. Poulos believes that including a participant's fails as a criterion by which FICC would have to assess participation "would only create more risks in that these open obligations would be processed (or not) outside of FICC, without the benefit of, i.e., re-netting."

#### IV. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.<sup>11</sup> The proposed rule change should enhance FICC's surveillance and assessment of applicants' and members' regulatory conditions. In addition, the proposed rule change will harmonize both of FICC's division's application and membership requirements and will make clear to all applicants and members of the breadth of information that FICC will require and review in order to develop an accurate risk profile to evaluate an applicant's or member's condition. Accordingly, the proposed rule should strengthen FICC's ability to mitigate financial risk to itself and to its members and therefore should enhance FICC's ability to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible.

The Commission also agrees that the issue of "fails" is a serious one for the securities industry. The Commission will continue to monitor developments in this area and will use its regulatory authority if needed to better ensure that appropriate safeguards are in place to facilitate the prompt and accurate clearance and settlement of securities transactions and to protect investors. In this regard, the Commission expects FICC, as a self-regulatory organization and registered clearing agency, to similarly continue to scrutinize its participants' effectiveness in delivering funds and securities in fulfillment of their obligations when using FICC's clearing facilities.

#### V. 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<sup>12</sup> of the Act and the rules and regulations thereunder.<sup>13</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (File No. SR-FICC-2007-04), as amended, be and hereby is approved. For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59105; File No. SR-NSCC-2008-08]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend Rules to Add an Agreement from Fund Members that Submit Mutual Fund Profile Information

December 16, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 30, 2008, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-NSCC-2008-08. The Commission is publishing this notice to solicit comments from interested parties on the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NSCC.<sup>2</sup>

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

NSCC is proposing to amend its rules to add an agreement that requires NSCC fund members to have taken reasonable steps to validate the accuracy of the data they submit to the Mutual Fund Profile Service database.

<sup>12</sup> 15 U.S.C. 78q-1.

<sup>13</sup> 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).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The exact text of the NSCC's proposed rule change can be found at [http://www.dtcc.com/downloads/legal/rule\\_filings/2008/nscc/2008-08.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2008/nscc/2008-08.pdf).

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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>3</sup>

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

###### 1. Purpose

The Mutual Fund Profile Service ("Profile") is a central data source for comprehensive fund prospectus and operational information relating to mutual funds. The repository is a recognized industry standard for information critical to the distribution of mutual funds in the third-party market.

Profile is organized into three databases: (1) Security Issue Database (containing information such as Security ID number, security name, fee structure, investment objectives, breakpoint schedule data, and blue sky eligibility); (2) Participant Database (containing contact information, NSCC processing capabilities and restrictions or requirements); and (3) Distribution Database (containing projected or actual distributions, capital gains and dividend amounts and details, and commission information). NSCC fund members input data regarding their mutual funds into the Security Issue and Participant Profile databases. Profile is then accessed by the NSCC members that are mutual fund distributors.

NSCC has recently enhanced the Security Issue Database in Profile to include new data fields needed by distributors and to re-engineer the structure of the data hierarchy to be easier for fund members to populate their data. Some of the enhancements to the Profile database were initiated in response to a recommendation in the Report ("Report") of The Joint NASD/Industry Task Force on Breakpoints ("Task Force").<sup>4</sup> NSCC has also adopted

<sup>3</sup> The Commission has modified portions of the text of the summaries prepared by the NSCC.

<sup>4</sup> The Task Force was formed in 2003 by the National Association of Securities Dealers ("NASD", now "FINRA") with the participation of major fund companies, broker-dealers, NSCC, the Securities Industries Association and the

[FICC-2005-11] (establishing a daily fail netting process basis allowing participants to net outstanding fail obligations with current settlement activity in order to reduce risk exposure among FICC participants) and 54487 (Sept. 22, 2006), 71 FR 58025 (Oct. 2, 2006) [FICC-2005-17] (FICC assumes certain fails of blind brokered repurchase transactions at GSD and obtains financing as necessary in connection with such assumptions).

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(F).

measures to assist funds members in validating their data once it is in the Profile database by developing reports that note probable inconsistencies among related data fields, by arranging for free access by fund members to a vendor tool that verifies Profile data, and by reaching out to fund members in the form of personal contacts and an on-line web demonstration on populating data into the Profile database.

Consistent with its efforts to expand Profile's capabilities as a comprehensive and accurate source for the mutual fund distribution industry, NSCC is now proposing to amend its rules to add an agreement that requires NSCC fund members to have taken reasonable steps to validate the accuracy of their data they submit to the Profile database. This agreement is not intended to be either a basis for independent legal rights against the fund member or is any third party intended or permitted to rely upon it as a representation to a third party or upon which a third-party can base any legal rights. NSCC requires similar agreements from its members elsewhere in its Rules and in its membership agreement, such as the agreement required of a fund member in Section 2 of Rule 51 to not submit a transaction through NSCC's Mutual Fund Services in contravention of any applicable regulatory requirements.

## 2. Statutory Basis

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act, as amended,<sup>5</sup> and the rules and regulations thereunder because the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions by modifying a NSCC service in order to reduce the inherent risks associated with securities certificates. Since NSCC's Profile database is widely used by mutual fund distributors in processing the distribution of mutual fund shares, the proposed rule change should facilitate the prompt and

accurate clearance and settlement of securities transactions by assisting in the overall processing efficiency of mutual fund transactions and reducing processing difficulties resulting from incomplete or inaccurate information.

### (B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period:

(i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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-2008-08 in the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NSCC-2008-08. 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 a.m. and 3:30 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site, <http://www.dtcc.com>. 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-2008-08 and should be submitted on or before January 20, 2009.

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

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59106; File No. SR-NYSE-2008-112]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Discontinue Policy of Prohibiting Transfer Agents from Charging Fees for Issuing Stock Certificates

December 16, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 30, 2008, New York Stock Exchange, LLC ("NYSE") filed with the Securities and Exchange Commission ("Commission") proposed rule change No. SR-NYSE-2008-112. The

Investment Company Institute, in response to the NASD examination findings in which it was discovered that investors frequently failed to receive appropriate breakpoint discounts in front-end sales load mutual fund transactions. Recommendation (B) of the report stated that NSCC's Profile database should be expanded to include breakpoint aggregation terms and rules for all fund families and should include identification of both link-eligible products (for example, retirement plans, annuities, and insurance products and college savings plans with mutual fund holdings). The Report also noted that for this database to be effective, it must also be comprehensive. Accordingly, mutual funds must fully and accurately populate the database and must update the database on a timely basis.

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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