

the company seeks to adopt its first non-compliant practice. In the interest of transparency, the rule requires a foreign private issuer to make appropriate disclosures in the issuer's annual filings with the Commission (typically Form 20-F or 40-F), and at the time of the issuer's original listing in the United States, if that listing is on Nasdaq, in its registration statement (typically Form F-1, 20-F, or 40-F); alternatively, the issuer may provide these disclosures in English on its Web site. The issuer shall disclose each requirement of Rule 4350 that it does not follow and include a brief statement of the home country practice the issuer follows in lieu of the requirements of Rule 4350. If the disclosure is only available on the Web site, the annual report and registration statement should so state and provide the web address at which the information may be obtained.

2.-4. No change.

\* \* \* \* \*

### III. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>5</sup> After careful consideration, the Commission finds that the proposed rule change is consistent with the provisions of the Act because it requires foreign private issuers to comply with the same DRS-eligibility rules required of other equity issuers unless the foreign private issuer is prohibited from doing so under its home country laws. The rule change relating to clarification that the DRS-eligibility requirement excludes all book-entry-only securities is consistent with the Act because it allows issuers, broker-dealers, and investors to better determine which securities are required to be facilitated in DRS and which securities are not.

Accordingly, for the reasons stated above the Commission finds that the rule change is consistent with Nasdaq's obligation under Section 6(b) of the Act to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>6</sup>

### 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 with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NASDAQ-2008-031) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58160; File No. SR-NSCC-2007-07]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Restructure Its Rules Relating to Fines and To Harmonize Them With Similar Rules of Its Affiliates

July 15, 2008.

#### I. Introduction

On April 30, 2007, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission"), and on December 10, 2007, and February 12, 2008, amended proposed rule change SR-NSCC-2007-07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the **Federal Register** on April 22, 2008.<sup>2</sup> No comment letters were received on the proposal. This order approves the proposal.

<sup>6</sup> In approving the proposed rule change, the Commission notes that it has considered the impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 7 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 57667 (Apr. 15, 2008), 73 FR 21677.

#### II. Description

The proposed rule change restructures the NSCC rules related to fines and where practicable or beneficial harmonizes them with similar rules of NSCC's affiliates, The Depository Trust Company ("DTC") and the Fixed Income Clearing Corporation ("FICC").<sup>3</sup>

##### A. Fines Scheduled for Failure To Submit Financial and Other Information

NSCC members are assessed fines for failure to submit required financial, regulatory, and other information within the time frame established by NSCC. As part of the effort to harmonize its rules with its affiliates, NSCC is adopting the fine schedule currently used by FICC for this purpose. Pursuant to its filing, members will be fined \$300, \$600, and \$1,500 for their first, second, and third occasion of failing to timely provide financial, regulatory, and other related information. NSCC is also changing the footnotes of this section of the applicable fine schedule to make certain clarifications, including that the determination of the fine amount after the fourth or more occasion of an offense within a twelve month rolling period will be made by the Board of Directors.<sup>4</sup>

Often a member that is fined is a common member of NSCC and FICC, NSCC and DTC, or NSCC, FICC, and DTC, (collectively the "Clearing Agencies") which would cause the member to incur multiple penalties for the same offense.<sup>5</sup> When a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies, as appropriate.<sup>6</sup>

<sup>3</sup> DTC and FICC have filed similar proposed rule changes. Securities Exchange Act Release No. 57665 (Apr. 15, 2008), 73 FR 21673 [SR-DTC-2007-05]. Securities Exchange Act Release No. 57666 (Apr. 15, 2008), 73 FR 21675 [SR-FICC-2007-05].

<sup>4</sup> Under NSCC rules, the terms "Board" or "Board of Directors" mean the Board of Directors of NSCC or a committee thereof acting under delegated authority.

<sup>5</sup> DTC does not currently maintain a fine schedule with respect to late submission of required financial, regulatory, or other information. However, DTC has filed a proposal to adopt a fine schedule similar to the one NSCC is adopting. *Supra* note 3.

<sup>6</sup> For example, if a firm is a member of NSCC and FICC, did not submit its annual audited financial statements within the required time frame, and this was the firm's first failure to meet the deadline, the \$200 fine will be split equally between NSCC and FICC.

Where the member is a participant of DTC and also a member of one or more of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among the other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

<sup>5</sup> 15 U.S.C. 78f(b)(5).

### B. General Continuance Standards

NSCC's rules currently require a member to promptly notify NSCC of the member's non-compliance with general member continuance standards but do not set forth a specific time frame in which to do so and do not provide for the imposition of a fine for not promptly notifying NSCC. In the interest of harmonizing this provision with a similar FICC provision, NSCC is: (a) Requiring the member to make such a notification within two business days; (b) requiring the member to notify NSCC within the two-day time frame if it becomes subject to a statutory disqualification; and (c) subjecting the member to a \$1,000 fine for failure to timely notify NSCC.

NSCC also currently imposes a fine in the amount of \$5,000 if an applicable member fails to notify NSCC of a material change to its business. Pursuant to NSCC's rules, a material change currently includes a merger or acquisition involving the member; a change in corporate form; a name change; a material change in ownership, control, or management; and participation as a defendant in litigation which reasonably could be anticipated to have a direct negative impact on the member's financial condition or ability to conduct its business. For uniformity with similar FICC provisions, NSCC is amending its rules so that notice of such events must be provided at least ninety calendar days prior to the effective date of such event unless the member demonstrates that it could not have reasonably given notice within that time frame.

With respect to both fines, NSCC is amending its rules to reflect that when a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies.<sup>7</sup>

### C. Fine Schedule for Late Clearing Fund Deficiency Payments

NSCC members are subject to fines for late payments of Clearing Fund

deficiency calls. NSCC is amending the footnote to this section of its fine schedule to correspond with that of FICC's fine schedule as proposed by FICC in a separate rule filing.<sup>8</sup> If the number of occasions of late Clearing Fund deficiency call payments within a three-month rolling period exceeds four, NSCC will obtain the Board's concurrence for the fine amount. Furthermore, a late payment of more than one hour will result in a fine equal to the amount applicable to the next highest occasion for the specific deficiency amount.<sup>9</sup> If a member is late for more than one hour and it is the member's fourth occasion in the rolling period, NSCC will obtain the Board's concurrence for the fine amount.

### D. Fine Schedule for Late Settlement Payments

The Clearing Agencies currently have provisions for fines for late payment of settlement obligations. NSCC is amending the footnote in this section of its fine schedule to correspond with those of the other Clearing Agencies. If the number of occasions of late settlement payments within the rolling three-month period exceeds four, NSCC will obtain the Board's concurrence for the fine amount.<sup>10</sup> Furthermore, a payment late by more than one hour will result in a fine equal to the amount applicable to the next highest occasion for the specific deficiency amount. If a member is late by more than one hour and it is the member's fourth occasion in the rolling three-month period, NSCC will obtain the Board's concurrence for the fine amount.

### 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),<sup>11</sup> 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 and with the requirements of Section 17A(b)(3)(H)<sup>12</sup> which, among other things, requires that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants and the denial of participation to any person seeking to be a participant. The Commission finds that the proposed rule change, which restructures and harmonizes NSCC's fines with those of DTC and FICC, is consistent with those statutory obligations.

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

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (File No. SR-NSCC-2007-07) be, and hereby is, approved.<sup>15</sup>

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

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58162; File No. SR-NYSEArca-2008-73]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade 14 Funds of the Commodities and Currency Trust Pursuant to Unlisted Trading Privileges

July 15, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 11, 2008, NYSE Arca, Inc. ("NYSE Arca" or

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(H).

<sup>13</sup> 15 U.S.C. 78q-1.

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

<sup>15</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>16</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

The Clearing Agencies do not view the proposed rule changes as fee reductions, because they never intended to charge a common member multiple times for a single violation.

<sup>7</sup> DTC does not currently maintain a fine in this regard. However, DTC has filed a proposal to adopt a fine schedule similar to the one NSCC is proposing to adopt. *Supra* note 3.

Where the Member is a participant of DTC and is a common member of one or more of the other clearing agencies, the fine would be collected by DTC and allocated equally among other clearing agencies, as appropriate. If the member is not a DTC participant, but is a common member between NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

<sup>8</sup> *Supra* note 3.

<sup>9</sup> For example, if a firm's deficiency amount is under \$1,000,000, it is the firm's second occurrence of late satisfaction of a deficiency call in the rolling three-month period, and the firm is late by more than one hour, the firm would be fined \$200 (*i.e.*, the fine for a third occasion) instead of \$100 (*i.e.*, the fine for a second occasion) pursuant to the proposed fine schedule.

<sup>10</sup> This change requires the removal of language granting NSCC discretion over the fine amount upon consultation with the settling bank only member, member, mutual fund/insurance services member, or fund member.

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