

IMPORTANT NOTICE

National Securities Clearing Corporation



The Depository Trust &
Clearing Corporation

A#6670

P&S #6240

DATE: August 6, 2008

TO: ALL PARTICIPANTS

ATTENTION: MANAGING PARTNER/OFFICER, OPERATIONS
PARTNER/OFFICER, COMPLIANCE OFFICER

FROM: General Counsel's Office

SUBJECT: APPROVAL OF RULE CHANGE – SR-NSCC-2007-07 (Fines)

The Securities and Exchange Commission (“SEC”) has approved NSCC rule filing SR-NSCC-2007-07. The approved rules will: (i) restructure the NSCC Rules related to fines, and (ii) (where practicable and/or beneficial) harmonize them with similar Rules of NSCC’s affiliates, the Fixed Income Clearing Corporation (“FICC”) and The Depository Trust Company (“DTC”). *These changes will become effective on Monday, September 8, 2008.*

A summary of key changes is provided below. Please refer to the rule filing, which is available on DTCC’s website (www.dtcc.com), for the full text of the rule changes.

(i) Fine Schedule for Failure to Submit Financial and Other Information

Members of NSCC receive fines for failure to submit required financial, regulatory and other information by the publicized time frames. As part of the ongoing effort to harmonize the Rules with those of its affiliates, NSCC will adopt the schedule currently utilized by FICC for this purpose. NSCC will also adopt changes to the footnotes 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 determined with the concurrence of the Board or the Credit and Market Risk Management Committee (or similar committee). These footnotes will also set forth the above-mentioned division of fines among the Clearing Agencies (as defined below).

Oftentimes a member that is fined pursuant to the above-mentioned schedule is a common member of FICC and/or DTC, as well, which would cause the member to incur multiple penalties for the same offense. NSCC will provide in its Rules that a common member of NSCC, FICC and DTC⁴ (each a “Clearing Agency” and, collectively, the “Clearing Agencies”) that is late in providing the same

⁴ DTC does not currently maintain a fine schedule in this regard, however, it filed a separate rule filing (which has also received SEC approval) in order to adopt the schedule NSCC will adopt for this purpose.

information to more than one Clearing Agency would be subject to an equal portion of the applicable fine amount at each Clearing Agency.⁵

Please see the attached Exhibit A for a copy of this fine schedule.

(ii) General Continuance Standards

NSCC's Rules require a member to notify NSCC of its non-compliance with general continuance standards, but do not include the imposition of a specific fine in this regard. In the interest of harmonizing this provision with a similar FICC provision, NSCC will expand this requirement to include: (i) requiring the member to make such a notification within 2 business days, (ii) requiring the member to also notify NSCC within the two-day timeframe if it becomes subject to a statutory disqualification, and (iii) subject the member to a \$1,000 fine for failure to timely notify NSCC in this regard.

NSCC also currently imposes a fine in the amount of \$5,000 if an applicable member fails to notify it about a "material" change. A material change currently includes events such as 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 could reasonably be anticipated to have a direct negative impact on the member's financial condition or ability to conduct its business. In order to make the NSCC Rules uniform with similar FICC provisions, NSCC's Rules will require that notice of such events must be provided 90 calendar days prior to the effective date of such event unless the member demonstrates that it could not have reasonably have given notice within that time frame.

With respect to both fines (\$1,000 and \$5,000) mentioned above, NSCC's Rules will provide that a common member of the Clearing Agencies that is late in providing the same requisite notification to more than one Clearing Agency will be subject to an equal portion of the applicable fine amount at each Clearing Agency (this will be consistent with the approach described above with respect to fines for failure to timely provide requisite financial and other information).⁶

(iii) Fine Schedule for Late Clearing Fund Deficiency Payments

NSCC members are also subject to fines for late Clearing Fund deficiency payments. With a view towards harmonization between the NSCC and FICC Rules in this regard, NSCC will revise the footnotes to its schedule to correspond with those to be adopted by FICC in a separate rule filing, including:⁷

(A) If the number of occasions within the three-month rolling period exceeds four, management will obtain the Committee's concurrence as to the fine amount.

⁵ For example, assume that Firm A is a member of DTC, FICC and NSCC and is required to submit its annual audited financial statements within a certain timeframe. If Firm A is late in its submission of the statements (and this is Firm A's first lateness), Firm A will be fined \$300 total (\$100 for DTC, \$100 for FICC and \$100 for NSCC).

⁶ DTC does not currently maintain a fine in this regard, however, it filed a separate rule filing (which has also received SEC approval) to adopt the same schedule as NSCC will for this purpose.

⁷ FICC will adopt the fine schedule currently used by NSCC.

(B) A lateness 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.⁸ If a member is late for more than one hour and it is the member's fourth occasion, management will obtain the Committee's concurrence as to the fine amount.

Please see the Rule Filing for a copy of this fine schedule.

(iv) Fine Schedule for Late Settlement Payments

The Clearing Agencies currently have provisions for fining for late settlement payments. In order to harmonize this process with that of the other Clearing Agencies, NSCC will add the following provisions to the footnotes of the applicable fine schedule:⁹

(A) If the number of occasions within the three-month rolling period exceeds four, the Corporation shall obtain the concurrence of the Board of Directors as to the fine amount. This change necessitates the removal of language granting NSCC discretion as to the fine amount upon consultation with the Settling Bank Only Member, Member, Mutual Fund/Insurance Services Member or Fund Member.

(B) A lateness 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. If a Settling Bank Only Member, Member, Mutual Fund/Insurance Services Member or Fund Member is late for more than one hour and it is the fourth occasion in the rolling period, the Corporation shall obtain the concurrence of the Board of Directors as to the fine amount.

The schedule will also be amended to correct overlaps in the applicable net debit amounts.

Please see the Rule Filing for a copy of this fine schedule.

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Questions regarding the rule filing may be directed to John Petrofsky at (212) 855-7634 or to your Relationship Manager.

Larry Thompson
Managing Director and General Counsel

⁸ For example, if Firm A's deficiency amount is under \$100,000, it is Firm A's second lateness in the three-month period and Firm A is late by more than one hour, Firm A will be fined \$200 pursuant to this fine schedule.

⁹ Pursuant to the same fine schedule NSCC also fines members for late acknowledgments during the National Settlement System ("NSS") process.

Exhibit A

Failure to Timely Provide Financial and Related Information

<u>Request for Information*</u>	<u>First Occasion</u>	<u>Second Occasion</u>	<u>Third Occasion</u>	<u>Fourth Occasion</u>
Reports/ Information**	\$300	\$600	\$1,500	***

*Fines to be levied for offenses within a moving twelve-month period beginning with the first occasion.

**For purposes of this Fine Schedule, "Reports/Information" shall mean the financial, regulatory and other information required to be submitted within a specified deadline to the Corporation.

***Fourth or more occasion fines will be determined by the Corporation with the concurrence of the Board of Directors.

If the Member's late submission applies to more than one DTCC clearing agency subsidiary, the fine amount will be divided equally among the clearing agencies. 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.