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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63588; File No. SR-NSCC-2010-11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change to Enhance the Reconfirmation and Pricing Service, Including the Creation of the Obligation Warehouse

December 21, 2010.

I. Introduction

On October 10, 2010, the National Securities Clearing Corporation ('`NSCC'') filed with the Securities and Exchange Commission ('`Commission'') proposed rule change SR-NSCC-2010-11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ('`Act'').\1\ Notice of the proposal was published in the Federal Register on October 25, 2010.\2\ The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

\1\ 15 U.S.C. 78s(b)(1).
\2\ Securities Exchange Act Release No. 63126 (October 18, 2010), 75 FR 65546 (October 25, 2010).

II. Description

Reconfirmation and Pricing Service ('`RECAPS'') is NSCC's automated fail clearance system for eligible securities. Through RECAPS, members are provided with an opportunity on a quarterly basis to reconfirm and reprice compared transactions which remain unsettled (i.e., fail transactions). As approved, the rule change modifies RECAPS to run on a more frequent basis, enhances RECAPS, and renames the RECAPS process the Obligation Warehouse ('`OW'' or ``OW Service''). As more fully described below, the new enhanced service will provide: (1) Comparison of transactions that are not otherwise submitted by the applicable marketplaces or members themselves for trade comparison or recording through other NSCC trade capture services; (2) tracking, storage, and maintenance of unsettled obligations either compared through the service or forwarded to it from other NSCC services in accordance with NSCC rules including trades involving securities exited from NSCC's Continuous Net Settlement ('`CNS'') system, non-CNS Automated Customer Account Transfer Service ('`ACATS'') items,\3\ NSCC Balance Order transactions, and Special Trades (collectively ``OW Obligations''); \4\ and (3) repricing and netting of fail obligations. The tracking,

storage, and maintenance functionality of the OW will provide transparency, will make information available to its users, will serve as a central depository of open (i.e., failed or unsettled) broker-to-broker obligations, and will allow users to manage and to resolve exceptions (e.g., ``don't know'' or ``DK'' obligations) in an efficient and timely manner. The OW will also simultaneously provide on-going maintenance and servicing of open OW Obligations such as adjustments for corporate actions and regular scans for CNS eligibility.\5\

\3\ Only non-CNS eligible ACATS items and CNS-eligible ACATS items that have been designated as ex-CNS shall be forwarded to the OW. Non-CNS ACATS items for mutual funds, limited partnerships, and safekeeping items, however, will not be eligible for OW.

\4\ Balance Orders will be forwarded to the OW after netting and allotting has occurred in accordance with NSCC's Procedures.

\5\ These functionalities will be made available at a date no less than ten business days following announcement of implementation by Important Notice.

Currently RECAPS allows members \6\ to periodically reconfirm open, aged fails (i.e., fails that are five or more days old), reprice such fails to the current market value, and when possible, net the reconfirmed and repriced fails. As part of the RECAPS process, those CNS-eligible recompared fails are forwarded to CNS for processing and settlement. Transactions in non-CNS eligible issues are repriced, netted, and allotted, when applicable, and Balance Orders generated for them or they are designated to settle trade-for-trade.

\6\ All NSCC members that are also members of the Financial Industry Regulatory Authority (``FINRA'') are required to participate in the RECAPS service, however, the service is available to all NSCC members. See FINRA Rule 11190(a).

RECAPS provides reject and DK capabilities for received advisories. Advisories that are either ``unresponded to'' or ``DK'd'' are subject to close-out action under the rules of the appropriate marketplace. RECAPS requires members to respond through batch overnight submissions to all open fails submitted by a counterparty. RECAPS provides for a one-day settlement capability for all compared fails.

Obligation Warehouse

Many of the transactions submitted to RECAPS by members are subject to noncentralized, manual processes for purposes of comparison of fail details and fail confirmation. Under this rule change, NSCC will enhance and rename the RECAPS service as the OW to which members may submit and may subsequently maintain and manage their unsettled transactions. As part of these enhancements, NSCC will provide a trade matching and confirmation process pursuant to which members may submit to NSCC information on certain obligations that are not otherwise submitted to NSCC by the applicable marketplaces or by the members themselves through NSCC's other trade comparison or recording services.\7\ Comparison of transactions submitted through the OW will occur in real-time. Obligations will be tracked and maintained within the OW and will be made available for RECAPS processing (as described below) until settled or otherwise cancelled. In addition, transactions

exited from CNS, non-CNS-eligible ACATS items, Balance Orders, and Special Trades will also be forwarded to the OW for storage and maintenance and RECAPS processing.\8\ Compared items stored in the OW (whether compared by the OW or forwarded to it from other NSCC services or systems) will be referred to as ``OW Obligations.'' In order to further reduce manual processing by members, NSCC may automatically adjust any OW Obligations for certain mandatory reorganization events, which will initially be limited to adjustments for forward splits, name changes, redemptions, mergers (both cash and stock), and full calls with respect to bonds.\9\

\7\ Procedure II (Trade Comparison and Recording Service) sets forth the procedures for comparison of direct submissions by members and for trade recording of locked-in transactions. In accordance with Municipal Securities Rulemaking Board (``MSRB'') rules, NSCC reports transactions in municipal securities compared through its Real-time Trade Matching (``RTTM'') service to the MSRB on behalf of members; however, transactions submitted through the OW will not be reported by NSCC to the MSRB. In order to remain compliant with MSRB reporting requirements, members will have to continue to make submissions subject to MSRB rules through RTTM.

\8\ Such items will be subject to the validation criteria of the systems or services that forwarded them to the OW; therefore, the matching or validation criteria (which are set forth in footnote 9 below) will not apply.

\9\ Adjustments for mandatory reorganization events are expected to be available shortly after February 4, 2011, or a date no less than 10 business days following announcement of its implementation by Important Notice.

As approved, the OW Service will now forward to CNS on a daily basis (or such other time frame as NSCC determines from time to time) OW Obligations in CNS-eligible securities.\10\ However, the OW will not be a guaranteed service, and an obligation forwarded to CNS will only be guaranteed to the extent that the member pays its full settlement obligation on the date the item is originally scheduled to settle in CNS.

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Transactions eligible for submission will have to have a valid CUSIP or ISIN and be denominated in U.S. Dollars or such other currencies as NSCC may designate from time to time. NSCC may determine from time to time and shall announce by Important Notice which items are eligible for submission to OW. Initially, government, mortgage-backed, and foreign securities will all specifically not be eligible. Further, cash trades will be processed by OW only after settlement failure of these trades.

\10\ This functionality is anticipated to be rolled out in early March 2011.

OW Comparison and Trade Resolution Procedures

As approved, the rule change will provide that once a party enters the required transaction information,\11\ the contraparty will receive

an advisory to which it must respond by submitting identical transaction details to facilitate a compared obligation or by submitting a DK.\12\ If a member does not act on an advisory submitted against it by the close of business on the day after submission, NSCC may impose a fee upon the member. If the deliverer and receiver submit trade data that matches in all required respects, the trade will be deemed compared.\13\ NSCC may permit uncomparing trade details to be modified or cancelled by the submitter on the submission date through the use of the appropriate instruction.\14\ Upon comparison, NSCC may permit obligations to be cancelled if both receiver and deliverer agree by submitting a cancel request or if one party accepts the other party's cancel request. Each OW Obligation will receive an ``OW Control Number'' to facilitate tracking the obligation through its settlement, cancellation, or closure.

\11\ Data required for a valid submission will include security identification, quantity to which party is deliverer or receiver, contrabroker, deliverer's final money, settlement date, market participation identification (MPID) (if applicable), Member's unique reference number (`x-ref') whether a transaction should be excluded from CNS processing, and other identifying details as NSCC may require or permit.

\12\ Obligations will be able to be submitted to the OW in real-time. Required matching criteria will include the data required for a valid submission (i.e., specific criteria listed in the immediately preceding footnote except for the x-ref), and other identifying details as NSCC may require or permit. Any submission of a DK must include the applicable reason code pertaining to the Member's disagreement with the transaction.

\13\ For purposes of deeming a trade compared, NSCC will use an initial money tolerance of \$5 per million. The amount of the money tolerance may change from time to time pursuant to the filing of a proposed rule change by NSCC.

\14\ Modification of transaction details will result in the cancellation of the existing entry and the opening of a new submission. Transaction details that have been DK'd by a contraparty will be deleted from processing in accordance with time frames specified by NSCC from time to time. Initially, such transaction details will be deleted on the fifth business day following submission of the DK by the contraparty.

NSCC will have no responsibility for determining whether any trade submission is duplicative of an earlier trade submission. All trade submissions will be treated as separate submissions. NSCC may delete trade input which is not matched by such time frames as it determines from time to time.

Maintenance and Tracking

As a result of the rule change, the OW service will permit members to track each OW Obligation for the life of the obligation until it has been (i) settled, (ii) cancelled by the members that are the parties to the obligation, or (iii) otherwise closed in the OW Service by NSCC pursuant to NSCC Rules (e.g., when the obligation becomes CNS-eligible and is sent to CNS for settlement). NSCC may adjust any compared OW Obligation with respect to certain mandatory reorganization events, which will initially be limited to forward splits, name changes, redemptions, mergers (both cash and stock), and full calls with respect

to bonds. In the case of such a mandatory reorganization, at such time on or after the effective date of the reorganization as NSCC shall determine and to the extent NSCC has the relevant information, the affected OW Obligation may be adjusted in accordance with the terms of the reorganization event. With respect to name changes and forward splits, OW positions in the subject security will be converted into the equivalent positions of the new securities, cash, or both and a new obligation will be created automatically as part of the processing in the OW. Any cash component associated with a mandatory reorganization will be included as part of the member's daily money settlement with NSCC.\15\

\15\ In the event that NSCC ceases to act for a member pursuant to Rule 18, NSCC will reverse credits and debits relating to such a cash adjustment.

Unless otherwise excluded by a member, all CNS-eligible OW Obligations that reach the status of settlement date minus one ('`SD-1'') or that have reached or passed their scheduled settlement date, may be forwarded to CNS by NSCC on a daily basis.\16\ However, the settlement of any such item forwarded to CNS will be guaranteed only to the extent that the member pays its full settlement obligation on the date the item is scheduled to settle in CNS. An item forwarded to CNS from the OW may be exited from CNS to the extent the member fails to complete its settlement obligation. If NSCC exits an item, any credits received by a member arising from the corresponding payment obligation shall be reversed, and settlement of the item shall be effected between the receiving and delivering member outside the facilities of NSCC.

\16\ This functionality is expected to be rolled out by March 2011 or on a date no less than 10 business days following announcement of its implementation by Important Notice.

OW Obligations for which deliveries are made through The Depository Trust Company ('`DTC'') through either The New York Window ('`NYW'') or electronic book-entry deliver order will be updated to indicate that they have settled in accordance with proper instructions from DTC or the member, respectively. In order to give effect to such an update, members must provide DTC with instructions in accordance with DTC's procedures and must include the OW Control Number. In the event of a partial delivery through DTC, NSCC will update the records for the respective OW Obligation accordingly based on information received either from DTC or the member's update to their own OW Obligation records. Other items will be recorded as settled upon the submission of appropriate instructions by the counterparties. Obligations that have been reflected in the OW as settled may be reopened (either partially or fully) as a result of a delivery reclaim message sent by either party to the obligation to OW. Updates to reflect reclaims of settled transactions will be made once one party enters details of the original transaction and the original transaction's OW Control Number.\17\ Once these details are submitted, an advisory of the reclaim will be sent to the contraparty that must then submit either identical transaction details to facilitate the reclaim and reopening of the obligation in OW or notification that it does not accept the reclaim details entered by the initiating party. Updates for reclaims may only be submitted to the OW for a period of two business days following the actual settlement

date of the relevant obligation. If the reclaim message is not accepted by the counterparty, it will be deleted from the OW, and the parties will need to generate a new reclaim message in OW. If the original obligation has been settled for longer than two business days, any reclaim message will be rejected.

\17\ Transaction details required will be identical to those required when comparing an obligation. Supra note 7.

Pursuant to the approved rule change, if NSCC ceases to act for a member, all open activity relating to that member

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will be deleted from the OW. However, the reports relating to such activity will be maintained in accordance with NSCC's record retention requirements.

Modified RECAPS Process

Pursuant to the rule change, the existing RECAPS process will continue to function but in a modified form.\18\ Upon implementation of OW, the RECAPS process will be incorporated into OW and will require one day to complete. It is anticipated that the process will occur more frequently than the current quarterly schedule.\19\

\18\ It is expected that the first RECAPS process in the OW will run in late March or early April 2011.

\19\ Upon implementation of the changes described herein, NSCC anticipates operating the RECAPS process on a monthly cycle. Members will be notified of changes in the processing cycle, if any, by an NSCC Important Notice.

On a day specified by NSCC, each OW Obligation eligible for RECAPS \20\ will be re-priced, if appropriate,\21\ renetted and allotted, if appropriate, the settlement date will be updated to the next business date, and a new OW Obligation will be opened. Securities that are not CNS-eligible or that are designated as trade-for-trade will not be netted and allotted. Obligations eligible for RECAPS in the OW can be excluded from the RECAPS process if so designated by the member.

\20\ Obligations that are matched and have a settlement date of at least two days prior to the date on which the RECAPS process commences will be considered for inclusion in the RECAPS process. Fail items not already in the OW but eligible for RECAPS processing must be submitted to OW by the member prior to RECAPS processing.

\21\ In the event that the current market price for a security is not available, the obligation will be priced at the amount at which the obligation was previously matched.

All new obligations arising from the RECAPS process will be tracked and processed in accordance with the OW procedures described above. If a fail was open over an interest payment date, the parties to the trade will be required to settle that interest payment outside of NSCC. Any

net cash adjustments resulting from the RECAPS process will be sent to NSCC as they are under the current process.

Reporting

Under the new rule, each member will receive real-time updates regarding its OW activity. In addition, NSCC will make available to each member an end-of-day report that reflects all end-of-day positions of such member in OW, which may be accessed by members through NSCC's systems. Accordingly, NSCC will discontinue issuance of all RECAPS reports (e.g., RECAPS Contracts/Supplemental Contracts and RECAPS Compared Trade Summaries).

The rule change also creates a new Rule 51 (Obligation Warehouse) and Procedure IIA (Obligation Warehouse) to reflect the changes and enhancements as described above. Rule 51 provides: (i) A general description of the OW service, (ii) a provision relating to the settlement of OW Obligations and the non-guaranteed nature of the service, and (iii) a limitation of liability on the part of NSCC with respect to obligations processed through the OW. Furthermore, the provisions of Procedure IIA will supersede those set forth in Procedure II, Section F (RECAPS), and thus Section F will be deleted.

In addition, NSCC will make conforming changes to:

a. Rule 1 (Definitions) to add a definition for ``Obligation Warehouse'' and ``OW Obligation'';

b. Rule 7 (Comparison and Trade Recording Operation) to remove language from the rule relating to submission of data to NSCC for reconfirmation and repricing of trade data with respect to transactions already compared through the facilities of NSCC or other facilities, as this service will now occur pursuant to Rule 51 and Procedure XVII;

c. Rule 11 (CNS System) to provide that obligations arising from Special Trades will be automatically entered into the OW;

d. Rule 18 (Procedures for When NSCC Ceases to Act) to reflect that (i) the OW Obligations that have been forwarded to CNS for settlement relating to a member for which NSCC has ceased to act will be removed from the CNS Accounting Operation and that any outstanding OW Obligations of the member will be removed from the OW service and (ii) NSCC will reverse any cash adjustments that were forwarded to settlement relating to the OW activity of a member for which NSCC has ceased to act;

e. Rule 50 (Automated Customer Account Transfer Service) to reflect that non-CNS ACATS items (as well as CNS-eligible items designated to be delivered ex-CNS) will be automatically entered into the OW;

f. Procedure V (Balance Order Accounting Operation) to reflect that Balance Orders will be automatically entered into the OW; and

g. Procedure VII (CNS Accounting Operation) to reflect (i) the addition of CNS-eligible OW activity to the CNS Miscellaneous Activity Report and (ii) securities removed from CNS that result in CNS Receive or Deliver Instructions will be entered into the Obligation Warehouse service.

Pilot and Participant Testing

NSCC implemented a pilot program of the OW process in early February 2010 for firms that had completed systems changes necessary to participate in the process. This pilot program ended at the beginning of June 2010 as additional discussions ensued between NSCC and its participant members regarding the additional functionalities, which are described in this filing, sought to be included within the service. Prior to implementation of OW, a participating member testing period will take place between November 2010 and January 2011. An industry-

wide test of the OW RECAPS process will be scheduled for some time in the first quarter of 2011.

Implementation Time Frame

NSCC will implement the changes set forth in this filing for all members during the first quarter of 2011 with the first settlement date expected to be on January 24, 2011. Mandatory reorganization events are anticipated to be applied to OW Obligations shortly after February 4, 2011, on a date no less than 10 business days following announcement of the implementation by Important Notice. Similarly, at the request of the industry, the functionality providing for OW Obligations to be reviewed for CNS-eligibility and if eligible sent to CNS will be implemented several weeks after the initial launch to give members time to familiarize themselves with the OW settlement tracking functionality. Accordingly, after March 4, 2011, or on a date no less than 10 business days following announcement of its implementation by Important Notice obligations in the OW will be reviewed for CNS-eligibility and if eligible will be closed and sent to CNS. The first RECAPS process in the OW will be run in late March or early April 2011. NSCC members will be advised of the implementation dates through issuance of NSCC's Important Notices.\22\

\22\ The dates set forth in this section are the dates NSCC anticipates taking action. As stated above, NSCC will keep its members informed of actual implementation and action dates by Important Notice.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and

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settlement of securities transactions.\23\ With the rule change modifying and enhancing the RECAPS to establish the OW service, NSCC will provide for greater efficiency and transparency with respect to securities transactions obligations processed through the OW. Furthermore, the modifications and enhancements will allow NSCC to improve its service by providing prompt and automated confirmation, comparison, and tracking of fail transactions.\24\

\23\ 15 U.S.C. 78q-1(b)(3)(F).

\24\ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Accordingly, for the reasons stated above the Commission believes that the rule change is consistent with NSCC's obligation under Section 17A of the Exchange Act, as amended, and the rules and regulations thereunder.

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 17A 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-NSCC-2010-11) be and hereby is approved.

For the Commission by the Division of Trading and Markets,
pursuant to delegated authority.\25\

\25\ 17 CFR 200.30-3(a)(12).

Florence E. Harmon,
Deputy Secretary.

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