

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of * <input style="width: 40px;" type="text" value="32"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input style="width: 40px;" type="text" value="2012"/> - * <input style="width: 40px;" type="text" value="04"/> Amendment No. (req. for Amendments *) <input style="width: 40px;" type="text"/>
Proposed Rule Change by National Securities Clearing Corporation Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934		
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>
Section 19(b)(2) * <input type="checkbox"/>		
Section 19(b)(3)(A) * <input checked="" type="checkbox"/>		
Section 19(b)(3)(B) * <input type="checkbox"/>		
Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="text"/>	Date Expires * <input type="text"/>
<input type="checkbox"/> 19b-4(f)(1) <input checked="" type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		
Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b> Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). <div style="border: 1px solid black; padding: 5px; min-height: 40px;">           Amendment to Rule 53 of NSCCs Rules and Procedures relating to the Alternative Investment Product Services to standardize and automate the method by which registered AIP broker-dealer members meet their good control location obligations for uncertificated securities         </div>		
<b>Contact Information</b> Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change. First Name * <input style="width: 200px;" type="text" value="Susana"/> Last Name * <input style="width: 200px;" type="text" value="Gonzalez"/> Title * <input style="width: 500px;" type="text" value="Senior Associate Counsel"/> E-mail * <input style="width: 500px;" type="text" value="sgonzalez@dtcc.com"/> Telephone * <input style="width: 100px;" type="text" value="(813) 470-2886"/> Fax <input style="width: 100px;" type="text" value="(813) 470-2735"/>		
<b>Signature</b> Pursuant to the requirements of the Securities Exchange Act of 1934,  has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.  Date <input style="width: 100px;" type="text" value="03/07/2012"/> By <input style="width: 200px;" type="text" value="Merrie Faye Witkin"/> <input style="width: 300px;" type="text" value="Managing Director and Deputy General Counsel"/> <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <span>(Name *)</span> <span>(Title *)</span> </div> <div style="text-align: center; margin-top: 10px;"> <input style="background-color: #ccc; border: none; padding: 2px 10px;" type="button" value="Merrie Faye Witkin, mwitkin@dtcc.com"/> </div> <p style="font-size: small; margin-top: 10px;">NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.</p>		

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information (required)**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change.

- (a) The text of the proposed rule change is attached hereto as Exhibit 5.
- (b) Not applicable.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization.

The Businesses & Products Committee of the Board of Directors approved the changes requested in the proposed rule change on February 14, 2012.

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

(a) National Securities Clearing Corporation (“NSCC”) proposes to amend Rule 53 of its Rules & Procedures (“Rule 53”) with respect to its Alternative Investment Product Services (“AIP”). The purpose of the proposed rule change is to standardize and automate the method by which registered AIP broker-dealer members (collectively, “AIP Distributors”) meet their “good control location” obligations for uncertificated securities under Securities and Exchange Commission (“SEC” or “Commission”) Rule 15c3-3(c)(7) when they designate another AIP Member, which acts on behalf of, or under authority of, the sponsor, general partner or any other party responsible for the creation or manufacturing of a participating AIP investment product (collectively, “AIP Manufacturers”), as a “good control location,” as more specifically provided below.

“Good Control Location” Background

Commission registered broker-dealers that hold securities for the accounts of their customers are required to maintain physical possession or control of all customer fully-paid and excess margin securities under Commission Rule 15c3-3(b). The possession or control requirement means that registered broker-dealers must have securities in their physical possession or held in their name for the benefit of their customers at one of the several “control locations” identified by Commission Rule 15c3-3(c). Because uncertificated securities generally cannot be physically held in a broker-dealer’s possession, the broker must establish that the uncertificated securities are lodged in what are generally referred to as “good control locations”. Under the Commission’s rule, good control locations include registered securities clearing agencies,<sup>1</sup> U.S. banks,<sup>2</sup> and, with

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<sup>1</sup> Commission Rule 15c3-3(c)(1).

<sup>2</sup> Commission Rule 15c3-3(c)(5).

the approval of the Commission, certain foreign financial institutions<sup>3</sup> and “such other locations as the Commission shall upon application from a broker or dealer find and designate to be adequate for the protection of customer securities.”<sup>4</sup>

Pursuant to Commission Rule 15c3-3(c)(7), Commission staff has permitted registered broker-dealers to designate certain entities as good control locations for uncertificated securities, subject to certain conditions outlined in No-Action Letters issued by Commission staff over the years, where such entities are obligated to create and maintain the ownership records with respect to such uncertificated securities.<sup>5</sup> The conditions outlined in these No-Action Letters have generally included the broker-dealers’ receipt of certain assurances and representations from the securities’ record keeper, which assurances and representations have come to be known as the “No Lien Assurances”. It is our understanding that broker-dealers currently generally receive the No Lien Assurances by obtaining a hard-copy letter from the issuer or its transfer agent or other record keeper of the securities.

In a No-Action Letter dated February 3, 2012 (the “2012 No-Action Letter”),<sup>6</sup> the Commission’s Division of Trading and Markets (the “Division”) addressed the use of AIP as a means for establishing good control locations. In it, the Division stated that it would not recommend enforcement action against Charles Schwab & Co., Inc. (“Schwab”) if Schwab used AIP to establish good control locations for uncertificated securities of alternative investment products participating in AIP.

#### AIP Background

NSCC’s AIP Service is a communications and payments processing platform for eligible alternative investment products, including interests in commodity pools, REIT securities, managed futures and managed currency products, and securities issued by

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<sup>3</sup> Commission Rule 15c3-3(c)(4).

<sup>4</sup> Commission Rule 15c3-3(c)(7).

<sup>5</sup> See, Wayne Hummer & Co., SEC No-Action Letter, 1986 WL 65387 (S.E.C.) (publicly avail. Apr. 8, 1986); Letter from Marc J. Hertzberg, Division of Market Regulation, to Brandon Becker, Wilmer, Cutler & Pickering (July 30, 1997); Letter from Mark M. Attar, Division of Market Regulation, SEC, to Brandon Becker, Wilmer, Cutler & Pickering (Sept. 17, 1999); Letter from Bonnie L. Gauch, Division of Market Regulation, SEC, to Michael K. Rafter, Holland & Knight, LLP (Jan. 5, 2000); Letter from Joseph I. Levinson, Special Counsel, Division of Trading and Markets, SEC, to Mark D. Fitterman, Morgan, Lewis & Bockius LLP (June 9, 2009); FOLIO[fn] Investments, Inc., SEC No-Action Letter, 2009 WL 58414 (Jan 6, 2009).

<sup>6</sup> Letter from Michael A. Macchiaroli, Division of Trading and Markets, SEC, to Peter J. Morgan III, Charles Schwab & Co., Inc. (February 3, 2012).

hedge funds, private equity funds and funds of funds (collectively, “Eligible AIP Products”). AIP provides for the processing of transactions in these products and for the settlement of related payments on a pre-funded basis, without netting and without a guarantee of payment in the event of a contra-side default.<sup>7</sup> Transactions processed through AIP include subscriptions and redemptions, distributions, position reporting and account maintenance.

Since its implementation, AIP has standardized the way the alternative investment industry communicates information between broker-dealers, fund managers, administrators, custodians and issuers of alternative investment products. In the last several months, the alternative investment industry has asked NSCC to further standardize and automate communications among these parties by creating a uniform mechanism by which AIP Distributors may satisfy their Rule 15c3-3(c)(7) good control location obligations when designating AIP Manufacturers as good control locations. NSCC believes it can offer a number of control improvements to the current manual, decentralized and paper-based mechanisms that are used today for establishing good control locations for uncertificated securities of alternative investments.

#### AIP Membership Requirements

Under NSCC Rule 53, the following types of entities are eligible to become AIP users (“AIP Members”):

- A broker-dealer registered under the Securities Exchange Act of 1934 (“Exchange Act”), or a non-U.S. broker-dealer subject to oversight and regulation by the appropriate financial services regulator in its home jurisdiction<sup>8</sup>;
- A bank or trust company that is a member of the U.S. federal reserve system or that is supervised and examined by U.S. federal or state banking authorities, or a non-U.S. bank subject to oversight and regulation by the appropriate financial services regulator in its home jurisdiction;
- An investment company registered under the Investment Company Act of 1940, or an issuer (structured as a fund or other pooled investment vehicle) that is not required to register thereunder;

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<sup>7</sup> SEC Release No. 34-57813; File No. SR-NSCC-2007-12 (May12, 2008).

<sup>8</sup> *But see* fn. 10, *infra*.

- An investment adviser as defined in the Investment Advisers Act of 1940 (“Advisers Act”) regardless of whether it is registered under the Advisers Act or is exempt from registration;
- A commodity pool operator or commodity trading advisor as defined in the Commodity Exchange Act (“CEA”) regardless of whether the commodity pool operator or commodity trading advisor is registered pursuant to the CEA or is exempt from registration thereunder;
- An insurance company subject to supervision or regulation under U.S. state insurance law or a non-U.S. insurance company subject to oversight and regulation by the appropriate insurance regulator in its home jurisdiction; and
- An entity engaged under contract to provide administrative services to one or more alternative investment products that can be processed through AIP.

Before acceptance as an AIP Member, each applicant must submit an executed AIP Membership Agreement to NSCC, agreeing, among other things, that it will:

- Only use the AIP Service<sup>9</sup>;
- Abide by the rules of the NSCC and be bound by all of the provisions thereof, and agree that the NSCC will have all of the rights and remedies contemplated by the rules of the NSCC;
- Be bound by the rules of the NSCC as to all matters and transactions occurring while the applicant is an AIP Member, notwithstanding that the applicant may subsequently cease to be an AIP Member;
- Not submit, clear or settle through the NSCC any contract or transaction unless the rules of the NSCC are part of the terms and conditions of such contract or transaction;
- Pay to NSCC such charges as shall be established by NSCC by rule;
- Not submit or confirm any transaction, charge, request, instruction or transmission through NSCC’s services, or otherwise utilize NSCC’s

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<sup>9</sup> An AIP Member may use another NSCC service but only if the AIP Member also executes a separate NSCC Membership Agreement.

services, in contravention of any law, rule, regulation or statute applicable to the AIP Member;

- Not submit any request, instruction, transaction or other transmission through NSCC's services for which it is not, directly or indirectly and whether acting on its own behalf or on behalf of any other entity, duly authorized;
- Pay such fines as may be imposed in accordance with NSCC's rules for the failure of the AIP Member, while an AIP Member, to comply therewith; and
- Be bound by any amendment to the rules of the NSCC with respect to any use of NSCC's services subsequent to the time such amendment takes effect, as fully as though such amendment were now a part of the rules of NSCC; provided, however, that no such amendment shall affect an AIP Member's right to cease to be an AIP Member of NSCC, unless before such amendment becomes effective, the AIP Member has opportunity to give written notice to NSCC of the AIP Member's election to discontinue being an AIP Member.

#### The Proposed Rule Changes

Currently, AIP provides for two alternative customer account designations, either, "broker-controlled" or "customer-controlled". The initial account designation with respect to any particular AIP account is generally made by the AIP Distributor acting on behalf of its investor customer. However, the AIP Manufacturer may change the account designation at any time. For example, if an investor were to directly notify the AIP Manufacturer that its account should no longer be designated as broker-controlled, the AIP Manufacturer could change the indication on the AIP system. The proposed rule changes to NSCC Rule 53 will apply solely with respect to "broker-controlled" AIP account designations.

NSCC proposes to amend Rule 53 to specify that when an AIP Distributor submits an AIP order for its customer account, and requests a broker-controlled designation as part of the order, the AIP Manufacturer accepting the order (and accordingly approving and making the broker-controlled designation as part of the

order)<sup>10</sup> will be making continual and ongoing representations and assurances to the controlling AIP Distributor that:

1. The Eligible AIP Product securities held (or to be held) in the account are not subject to any right, charge, security interest, lien or claim of any kind in favor of the AIP Manufacturer or any person claiming through the AIP Manufacturer;
2. To the knowledge of the AIP Manufacturer, there are no substantial problems of an operational nature which the AIP Manufacturer is experiencing or which may endanger the interest of investors in the Eligible AIP Product;
3. The Eligible AIP Product securities held (or to be held) in the account are registered with the Commission pursuant to the Securities Act, are exempt from such registration, or are not required to be so registered;
4. The Eligible AIP Product securities in the account (or to be held in the account) are registered on the books and records of the AIP Manufacturer, or its designee, in the name of the controlling AIP Distributor, on behalf of its customer;
5. In the case of Eligible AIP Product securities issued outside of the United States, the AIP Manufacturer does not require the controlling AIP Distributor, or any of its customers, to pay any fees other than for safe custody or administration as a condition for the transfer of the securities; and
6. The AIP Manufacturer understands and acknowledges that the controlling AIP Distributor may be relying on the above representations in order to establish custody in accordance with SEC Rule 15c3-3, and that failure to comply with the above representations may require that the controlling AIP Distributor remove the Eligible AIP Product securities from the applicable customer's brokerage account.

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<sup>10</sup> As set forth above, broker-dealers are eligible to be AIP Members. However, a broker-dealer's authority to serve as a good control location is derived from SEC rule 15c3-3(c)(2) and applicable SEC and SRO guidance. Nothing in this proposed rule change is intended to contradict existing regulations pertaining to control locations under SEC Rule 15c3-3.

The AIP Manufacturer representations and assurances in 1-6 above, collectively, the “AIP Manufacturer Representations and Assurances”.

The AIP Manufacturer Representations and Assurances will be obtained from each relevant AIP Manufacturer via an “accept” or “decline” option within the record layouts that reside in AIP. The relevant AIP Distributors will be able to determine through AIP whether the AIP Manufacturer Representations and Assurances have been provided by reference to an indicator on a security profile that is included on a data file provided to the AIP Distributor.

NSCC also proposes to amend the AIP Membership Agreement with regard to AIP Manufacturers to provide that each time the AIP Manufacturer accepts an AIP order and designates the securities with respect to that order as “broker-controlled,” such AIP Manufacturer will be making the AIP Manufacturers Representations and Assurances on a continual and ongoing basis to the applicable AIP Distributor, so long as the “broker-controlled” designation remains in place.

Additionally, Rule 53, as amended, will provide that each AIP Distributor that is a registered broker-dealer and that is relying on a specified AIP Manufacturer’s Representations and Assurances with respect to a customer account, shall, for so long as the applicable “broker-controlled” designation remains in place, be continually stating that such AIP Distributor:

1. Carries those Eligible AIP Product securities “long” in each respective customer account;
2. Reflects all share positions of the applicable Eligible AIP Product separately in its securities records or ledgers maintained pursuant to Commission Rule 17a-3;
3. Maintains in a separate file a current list of all AIP Manufacturers of which Eligible AIP Product securities are carried on that AIP Distributor’s books and records, including the name, telephone number and address of a contact person at each AIP Manufacturer; and
4. Is not aware of any substantial problems of an operational nature which AIP or the applicable AIP Manufacturer or issuer (if different) may be experiencing and which may endanger the interests of the customer.

The above AIP Distributor statements (collectively, the “AIP Distributor Statements”) would be recorded by way of an electronic indicator within AIP.

NSCC proposes to amend the AIP Membership Agreement with regard to AIP Distributors to set forth that each AIP Distributor who shall be relying on an AIP Manufacturer’s Representations and Assurances understands that such AIP Distributor will be continually and on an ongoing basis making the AIP Distributor Statements so long as the applicable “broker-controlled” designation remains in place.

The above AIP Manufacturer Representations and Assurances and AIP Distributor Statements conform to the No-Action Letters developed by the Commission staff and described herein, including the 2012 No-Action Letter addressing the use AIP for establishing good control locations. As noted above, registered broker-dealers currently establish their Commission Rule 15c3-3(c)(7) obligations by way of manual processes. Automating this process through AIP will standardize and centralize the process, assisting the parties in establishing compliance with legal requirements and providing a better audit trail for AIP Members and their regulators to verify compliance after the fact.

Further, if an AIP Manufacturer or AIP Distributor at any time elects to change the customer account designation from “broker-controlled” to “customer-controlled,” the above AIP Manufacturer Representations and Assurances and AIP Distributor Statements from that point forward would no longer apply to the relevant AIP Members, and each relevant AIP Distributor and AIP Manufacturer, as the case may be, would be put on notice that the designation with regard to the customer account has changed. As a condition set forth in the 2012 No-Action Letter, each AIP Distributor relying on the AIP Manufacturer Representations and Assurances is required to monitor AIP on a regular basis for any changes to the “broker-controlled” account designations for which the AIP Distributor maintains custody.<sup>11</sup>

(b) The proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations issued thereunder, because it promotes the prompt and accurate clearance and settlement of transactions in securities by automating,

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<sup>11</sup> See the 2012 No-Action Letter, Condition #7. Where an AIP Distributor learns that the designation for an Eligible AIP Product has been changed from “broker-controlled” to “customer-controlled,” the AIP Distributor should contact the AIP Manufacturer to confirm whether the position was intended to be returned to the customer. If the Eligible AIP Product is not re-designated as “broker-controlled,” the AIP Distributor should remove the position from the customer’s brokerage account.

standardizing and centralizing the communication of information between persons engaged in the clearance and settlement of securities transactions. In addition, the proposed rule change fosters cooperation and coordination between broker-dealers and issuers of securities and removes impediments to the prompt and accurate clearance and settlement of securities transactions.

4. Self-Regulatory Organization's Statement on Burden on Competition.

NSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Members, or Others.

NSCC has not solicited comments regarding this proposed rule change. NSCC has not yet received any unsolicited written comments from members or other interested parties. NSCC will notify the Commission of any written comments received by NSCC.

6. Extension of Time Period for Commission Action.

NSCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act for SEC action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2).

- (a) This filing is made pursuant to paragraph (A) of Section 19(b)(3) of the Act and subparagraph (f) of Rule 19b-4 under the Act, and shall become effective upon filing.
- (b) The proposed rule change effects a change in NSCC's existing AIP services that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible, and (B) does not significantly affect the respective rights or obligations of NSCC or the persons using the service. The proposed rule change affects a service of NSCC which is not guaranteed (i.e., to which NSCC is not a central counter-party) and which does not provide for the movement of securities or for the application of credits or debits to cash balances of members. Accordingly, the proposed rule change does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC or for which NSCC is responsible.

Additionally, designation of an account as "broker-controlled" or "customer-controlled" within AIP is wholly voluntary, meaning that an AIP Manufacturer may choose to decline an order request with a broker-controlled designation, and therefore, not be required to make the above stated assurances and representations. This is effectively what happens in the market today, outside of AIP, when a registered broker-dealer attempts to designate an account as broker-controlled but the applicable alternative investment product record keeper refuses to provide the requisite representations and assurances. A registered broker-dealers' failure to obtain such assurances and representations would preclude the registered broker-dealer to continue identifying the customer account in such alternative investment product as "broker-controlled". Under the proposed rule change, the rights and obligations of the parties would not change, but each relevant party would know the status of the customer account designation in a far less time-consuming manner. Further, if a "customer controlled" designation is made with respect to an AIP order, the above rule changes would not apply to either the AIP Manufacturer making the designation or to the applicable AIP Distributor.

(c) Not applicable.

(d) Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission.

The proposed rule change is not based upon the rules of another self-regulatory organization or of the Commission. As described in Item 3(a) above, the proposed rule change incorporates elements contained in prior Commission staff No-Action Letters relating to the establishment of control for uncertificated securities under Rule 15c3-3, including control of certain alternative investment products.

9. Exhibits

Exhibit 1 - Notice of proposed rule change for publication in the Federal Register.

Exhibit 2 – N/A

Exhibit 3 – N/A

Exhibit 4 – N/A

Exhibit 5 - Proposed Rule Text

**SECURITIES AND EXCHANGE COMMISSION**

**(Release No. 34-[\_\_\_\_\_]; File No. SR-NSCC-2012-04)**

**SELF-REGULATORY ORGANIZATIONS**

Proposed Rule Change by NATIONAL SECURITIES CLEARING CORPORATION (“NSCC”) Relating to its Alternative Investment Product Services.

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Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”), 15 U.S.C. 78s(b)(1), notice is hereby given that on \_\_\_\_\_, NSCC filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NSCC proposes to amend Rule 53 of its Rules & Procedures (“Rule 53”) with respect to its Alternative Investment Product Services (“AIP”). The proposed rule change is intended to standardize and automate the method by which registered AIP broker-dealer members meet their “good control location” obligations for uncertificated securities under Commission Rule 15c3-3(c)(7) when they designate another AIP Member as a “good control location.”

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

In its filing with the Commission, 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 such statements.

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

(i) NSCC proposes to amend Rule 53 of its Rules and Procedures. The purpose of the proposed rule change is to standardize and automate the method by which registered AIP broker-dealer members (collectively, "AIP Distributors") meet their "good control location" obligations for uncertificated securities under Commission Rule 15c3-3(c)(7) when they designate another AIP Member, which acts on behalf of, or under authority of, the sponsor, general partner or any other party responsible for the creation or manufacturing of a participating AIP investment product (collectively, "AIP Manufacturers"), as a "good control location," as more specifically provided below.

"Good Control Location" Background

Commission registered broker-dealers that hold securities for the accounts of their customers are required to maintain physical possession or control of all customer fully-paid and excess margin securities under Commission Rule 15c3-3(b). The possession or control requirement means that registered broker-dealers must have securities in their physical possession or held in their name for the benefit of their customers at one of the several "control locations" identified by Commission Rule 15c3-3(c). Because uncertificated securities generally cannot be physically held in a broker-dealer's possession, the broker must establish that the uncertificated securities are lodged in what are generally referred to as "good control locations". Under the Commission's rule, good control locations include registered securities clearing agencies,<sup>1</sup> U.S. banks,<sup>2</sup> and, with the approval of the Commission, certain foreign financial institutions<sup>3</sup> and "such other locations as the Commission shall upon application from a broker or dealer find and designate to be adequate for the protection of customer securities."<sup>4</sup>

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<sup>1</sup> Commission Rule 15c3-3(c)(1).

<sup>2</sup> Commission Rule 15c3-3(c)(5).

<sup>3</sup> Commission Rule 15c3-3(c)(4).

<sup>4</sup> Commission Rule 15c3-3(c)(7).

Pursuant to Commission Rule 15c3-3(c)(7), Commission staff has permitted registered broker-dealers to designate certain entities as good control locations for uncertificated securities, subject to certain conditions outlined in No-Action Letters issued by Commission staff over the years, where such entities are obligated to create and maintain the ownership records with respect to such uncertificated securities.<sup>5</sup> The conditions outlined in these No-Action Letters have generally included the broker-dealers' receipt of certain assurances and representations from the securities' record keeper, which assurances and representations have come to be known as the "No Lien Assurances". It is our understanding that broker-dealers currently generally receive the No Lien Assurances by obtaining a hard-copy letter from the issuer or its transfer agent or other record keeper of the securities.

In a No-Action Letter dated February 3, 2012 (the "2012 No-Action Letter"),<sup>6</sup> the Commission's Division of Trading and Markets (the "Division") addressed the use of AIP as a means for establishing good control locations. In it, the Division stated that it would not recommend enforcement action against Charles Schwab & Co., Inc. ("Schwab") if Schwab used AIP to establish good control locations for uncertificated securities of alternative investment products participating in AIP.

#### AIP Background

NSCC's AIP Service is a communications and payments processing platform for eligible alternative investment products, including interests in commodity pools, REIT securities, managed futures and managed currency products, and securities issued by hedge funds, private equity funds and funds of funds (collectively, "Eligible AIP Products"). AIP provides for the processing of transactions in these products and for the settlement of related payments on a pre-funded basis, without netting and

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<sup>5</sup> See, Wayne Hummer & Co., SEC No-Action Letter, 1986 WL 65387 (S.E.C.) (publicly avail. Apr. 8, 1986); Letter from Marc J. Hertzberg, Division of Market Regulation, to Brandon Becker, Wilmer, Cutler & Pickering (July 30, 1997); Letter from Mark M. Attar, Division of Market Regulation, SEC, to Brandon Becker, Wilmer, Cutler & Pickering (Sept. 17, 1999); Letter from Bonnie L. Gauch, Division of Market Regulation, SEC, to Michael K. Rafter, Holland & Knight, LLP (Jan. 5, 2000); Letter from Joseph I. Levinson, Special Counsel, Division of Trading and Markets, SEC, to Mark D. Fitterman, Morgan, Lewis & Bockius LLP (June 9, 2009); FOLIO[fn] Investments, Inc., SEC No-Action Letter, 2009 WL 58414 (Jan 6, 2009).

<sup>6</sup> Letter from Michael A. Macchiaroli, Division of Trading and Markets, SEC, to Peter J. Morgan III, Charles Schwab & Co., Inc. (February 3, 2012).

without a guarantee of payment in the event of a contra-side default.<sup>7</sup> Transactions processed through AIP include subscriptions and redemptions, distributions, position reporting and account maintenance.

Since its implementation, AIP has standardized the way the alternative investment industry communicates information between broker-dealers, fund managers, administrators, custodians and issuers of alternative investment products. In the last several months, the alternative investment industry has asked NSCC to further standardize and automate communications among these parties by creating a uniform mechanism by which AIP Distributors may satisfy their Rule 15c3-3(c)(7) good control location obligations when designating AIP Manufacturers as good control locations. NSCC believes it can offer a number of control improvements to the current manual, de-centralized and paper-based mechanisms that are used today for establishing good control locations for uncertificated securities of alternative investments.

#### AIP Membership Requirements

Under NSCC Rule 53, the following types of entities are eligible to become AIP users (“AIP Members”):

- A broker-dealer registered under the Securities Exchange Act of 1934 (“Exchange Act”), or a non-U.S. broker-dealer subject to oversight and regulation by the appropriate financial services regulator in its home jurisdiction<sup>8</sup>;
- A bank or trust company that is a member of the U.S. federal reserve system or that is supervised and examined by U.S. federal or state banking authorities, or a non-U.S. bank subject to oversight and regulation by the appropriate financial services regulator in its home jurisdiction;
- An investment company registered under the Investment Company Act of 1940, or an issuer (structured as a fund or other pooled investment vehicle) that is not required to register thereunder;

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<sup>7</sup> SEC Release No. 34-57813; File No. SR-NSCC-2007-12 (May12, 2008).

<sup>8</sup> *But see* fn. 10, *infra*.

- An investment adviser as defined in the Investment Advisers Act of 1940 (“Advisers Act”) regardless of whether it is registered under the Advisers Act or is exempt from registration;
- A commodity pool operator or commodity trading advisor as defined in the Commodity Exchange Act (“CEA”) regardless of whether the commodity pool operator or commodity trading advisor is registered pursuant to the CEA or is exempt from registration thereunder;
- An insurance company subject to supervision or regulation under U.S. state insurance law or a non-U.S. insurance company subject to oversight and regulation by the appropriate insurance regulator in its home jurisdiction; and
- An entity engaged under contract to provide administrative services to one or more alternative investment products that can be processed through AIP.

Before acceptance as an AIP Member, each applicant must submit an executed AIP Membership Agreement to NSCC, agreeing, among other things, that it will:

- Only use the AIP Service<sup>9</sup>;
- Abide by the rules of the NSCC and be bound by all of the provisions thereof, and agree that the NSCC will have all of the rights and remedies contemplated by the rules of the NSCC;
- Be bound by the rules of the NSCC as to all matters and transactions occurring while the applicant is an AIP Member, notwithstanding that the applicant may subsequently cease to be an AIP Member;
- Not submit, clear or settle through the NSCC any contract or transaction unless the rules of the NSCC are part of the terms and conditions of such contract or transaction;
- Pay to NSCC such charges as shall be established by NSCC by rule;
- Not submit or confirm any transaction, charge, request, instruction or transmission through NSCC’s services, or otherwise utilize NSCC’s services, in contravention of any law, rule, regulation or statute applicable to the AIP Member;

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<sup>9</sup> An AIP Member may use another NSCC service but only if the AIP Member also executes a separate NSCC Membership Agreement.

- Not submit any request, instruction, transaction or other transmission through NSCC's services for which it is not, directly or indirectly and whether acting on its own behalf or on behalf of any other entity, duly authorized;
- Pay such fines as may be imposed in accordance with NSCC's rules for the failure of the AIP Member, while an AIP Member, to comply therewith; and
- Be bound by any amendment to the rules of the NSCC with respect to any use of NSCC's services subsequent to the time such amendment takes effect, as fully as though such amendment were now a part of the rules of NSCC; provided, however, that no such amendment shall affect an AIP Member's right to cease to be an AIP Member of NSCC, unless before such amendment becomes effective, the AIP Member has opportunity to give written notice to NSCC of the AIP Member's election to discontinue being an AIP Member.

#### The Proposed Rule Changes

Currently, AIP provides for two alternative customer account designations, either, "broker-controlled" or "customer-controlled". The initial account designation with respect to any particular AIP account is generally made by the AIP Distributor acting on behalf of its investor customer. However, the AIP Manufacturer may change the account designation at any time. For example, if an investor were to directly notify the AIP Manufacturer that its account should no longer be designated as broker-controlled, the AIP Manufacturer could change the indication on the AIP system. The proposed rule changes to NSCC Rule 53 will apply solely with respect to "broker-controlled" AIP account designations.

NSCC proposes to amend Rule 53 to specify that when an AIP Distributor submits an AIP order for its customer account, and requests a broker-controlled designation as part of the order, the AIP Manufacturer accepting the order (and accordingly approving and making the broker-controlled designation as part of the order)<sup>10</sup> will be making continual and ongoing representations and assurances to the controlling AIP Distributor that:

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<sup>10</sup> As set forth above, broker-dealers are eligible to be AIP Members. However, a broker-dealer's authority to serve as a good control location is derived from SEC rule 15c3-3(c)(2) and applicable SEC and SRO guidance. Nothing in this proposed rule change is intended to contradict existing regulations pertaining to control locations under SEC Rule 15c3-3.

1. The Eligible AIP Product securities held (or to be held) in the account are not subject to any right, charge, security interest, lien or claim of any kind in favor of the AIP Manufacturer or any person claiming through the AIP Manufacturer;

2. To the knowledge of the AIP Manufacturer, there are no substantial problems of an operational nature which the AIP Manufacturer is experiencing or which may endanger the interest of investors in the Eligible AIP Product;

3. The Eligible AIP Product securities held (or to be held) in the account are registered with the Commission pursuant to the Securities Act, are exempt from such registration, or are not required to be so registered;

4. The Eligible AIP Product securities in the account (or to be held in the account) are registered on the books and records of the AIP Manufacturer, or its designee, in the name of the controlling AIP Distributor, on behalf of its customer;

5. In the case of Eligible AIP Product securities issued outside of the United States, the AIP Manufacturer does not require the controlling AIP Distributor, or any of its customers, to pay any fees other than for safe custody or administration as a condition for the transfer of the securities; and

6. The AIP Manufacturer understands and acknowledges that the controlling AIP Distributor may be relying on the above representations in order to establish custody in accordance with SEC Rule 15c3-3, and that failure to comply with the above representations may require that the controlling AIP Distributor remove the Eligible AIP Product securities from the applicable customer's brokerage account.

The AIP Manufacturer representations and assurances in 1-6 above, collectively, the "AIP Manufacturer Representations and Assurances".

The AIP Manufacturer Representations and Assurances will be obtained from each relevant AIP Manufacturer via an "accept" or "decline" option within the record layouts that reside in AIP. The relevant AIP Distributors will be able to determine through AIP whether the AIP Manufacturer Representations and Assurances have been provided by reference to an indicator on a security profile that is included on a data file provided to the AIP Distributor.

NSCC also proposes to amend the AIP Membership Agreement with regard to AIP Manufacturers to provide that each time the AIP Manufacturer accepts an AIP

order and designates the securities with respect to that order as “broker-controlled,” such AIP Manufacturer will be making the AIP Manufacturers Representations and Assurances on a continual and ongoing basis to the applicable AIP Distributor, so long as the “broker-controlled” designation remains in place.

Additionally, Rule 53, as amended, will provide that each AIP Distributor that is a registered broker-dealer and that is relying on a specified AIP Manufacturer’s Representations and Assurances with respect to a customer account, shall, for so long as the applicable “broker-controlled” designation remains in place, be continually stating that such AIP Distributor:

1. Carries those Eligible AIP Product securities “long” in each respective customer account;
2. Reflects all share positions of the applicable Eligible AIP Product separately in its securities records or ledgers maintained pursuant to Commission Rule 17a-3;
3. Maintains in a separate file a current list of all AIP Manufacturers of which Eligible AIP Product securities are carried on that AIP Distributor’s books and records, including the name, telephone number and address of a contact person at each AIP Manufacturer; and
4. Is not aware of any substantial problems of an operational nature which AIP or the applicable AIP Manufacturer or issuer (if different) may be experiencing and which may endanger the interests of the customer.

The above AIP Distributor statements (collectively, the “AIP Distributor Statements”) would be recorded by way of an electronic indicator within AIP.

NSCC proposes to amend the AIP Membership Agreement with regard to AIP Distributors to set forth that each AIP Distributor who shall be relying on an AIP Manufacturer’s Representations and Assurances understands that such AIP Distributor will be continually and on an ongoing basis making the AIP Distributor Statements so long as the applicable “broker-controlled” designation remains in place.

The above AIP Manufacturer Representations and Assurances and AIP Distributor Statements conform to the No-Action Letters developed by the Commission staff and described herein, including the 2012 No-Action Letter

addressing the use AIP for establishing good control locations. As noted above, registered broker-dealers currently establish their Commission Rule 15c3-3(c)(7) obligations by way of manual processes. Automating this process through AIP will standardize and centralize the process, assisting the parties in establishing compliance with legal requirements and providing a better audit trail for AIP Members and their regulators to verify compliance after the fact.

Further, if an AIP Manufacturer or AIP Distributor at any time elects to change the customer account designation from “broker-controlled” to “customer-controlled,” the above AIP Manufacturer Representations and Assurances and AIP Distributor Statements from that point forward would no longer apply to the relevant AIP Members, and each relevant AIP Distributor and AIP Manufacturer, as the case may be, would be put on notice that the designation with regard to the customer account has changed. As a condition set forth in the 2012 No-Action Letter, each AIP Distributor relying on the AIP Manufacturer Representations and Assurances is required to monitor AIP on a regular basis for any changes to the “broker-controlled” account designations for which the AIP Distributor maintains custody.<sup>11</sup>

(ii) The proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations issued thereunder, because it promotes the prompt and accurate clearance and settlement of transactions in securities by automating, standardizing and centralizing the communication of information between persons engaged in the clearance and settlement of securities transactions. In addition, the proposed rule change fosters cooperation and coordination between broker-dealers and issuers of securities and removes impediments to the prompt and accurate clearance and settlement of securities transactions.

**B. Self-Regulatory Organization’s Statement on Burden on Competition.**

NSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

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<sup>11</sup> See the 2012 No-Action Letter, Condition #7. Where an AIP Distributor learns that the designation for an Eligible AIP Product has been changed from “broker-controlled” to “customer-controlled,” the AIP Distributor should contact the AIP Manufacturer to confirm whether the position was intended to be returned to the customer. If the Eligible AIP Product is not re-designated as “broker-controlled,” the AIP Distributor should remove the position from the customer’s brokerage account.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.

NSCC has not solicited, and does not intend to solicit, comments regarding this proposed rule change. NSCC has not received any unsolicited written comments from interested parties.

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) of the Act and paragraph (f) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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 may be submitted by using the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or send an e-mail to [rule-comment@sec.gov](mailto:rule-comment@sec.gov). Please include File No. SR-NSCC-2012-04 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-NSCC-2012-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review 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 provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549-1090. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All comments 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 the file number above and should be submitted within \_\_\_\_\_ days after the date of publication.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Elizabeth M. Murphy  
Secretary

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

**Underlined boldface** text indicates additions

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## NATIONAL SECURITIES CLEARING CORPORATION

### RULES & PROCEDURES

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#### RULE 53. ALTERNATIVE INVESTMENT PRODUCT SERVICES AND MEMBERS

##### SEC. 1. General

(a) The Corporation may provide a service to enable entities meeting the relevant qualifications of Rule 2A (“AIP Members”) to transmit such data and information related to alternative investment products (“AIP Data”) and to settle payments relating to such products (“AIP Payments”) between themselves. Such service shall be known as the “AIP Service,” or “AIP,” and shall be accomplished in accordance with this Rule.

The rights, liabilities and obligations of AIP Members in their capacity as such and in the capacity as a Limited Member shall be governed by this Rule 53 and relevant provisions of such other Rules as expressly reference AIP Members or Limited Members. References to a Member, Mutual Fund/Insurance Services Member, Non-Clearing Member, Municipal Comparison Only Member, Fund Member, Insurance Carrier/Retirement Services Member, Investment Manager/Agent Member, TPP Member, TPA Member or Data Services Only Member shall not apply to an AIP Member in its capacity as such unless specifically noted in this Rule or in such other Rule as applicable to an AIP Member or Limited Member.

An AIP Member that participates in the Corporation in another capacity pursuant to another Rule of this Corporation, or which has entered into an agreement with the Corporation independent from this Rule, shall continue to have all the rights, liabilities and obligations set forth in such other Rule or pursuant to such agreement, and such rights, liabilities and obligations shall be separate from its rights, liabilities and obligations as an AIP Member. As such, with respect to Members, Mutual Fund/Insurance Services Members, Non-Clearing Members, Municipal Comparison Only Members, Fund Members, Insurance Carrier/Retirement Services Members, Investment Manager/Agent Members, TPP Members, TPA Members or Data Services Only Members who qualify as AIP Members, this Rule only applies to their activities in connection with transactions in Eligible AIP Products (as defined in Section 4 of this Rule).

(b) The only service offered by the Corporation that is available to an AIP Member in its capacity as such shall be the AIP Service, and such other services or features thereof that the Corporation may from time to time designate as eligible for access by an AIP Member.

(c) An AIP Member acting on behalf of, or under authority of, the sponsor, general partner or any other party responsible for the creation or manufacturing of an Eligible AIP Product (as defined in Section 4 of this Rule) shall be known as an "AIP Manufacturer". An AIP Member acting on behalf of, or under authority of, a customer or other investor in an Eligible AIP Product, or otherwise as the contra-side to an AIP Manufacturer in a transaction (including information processing) with an AIP Manufacturer, shall be known as an "AIP Distributor".

## SEC.2. Qualifications of AIP Members

(a) An AIP Member or applicant to become such must meet the qualifications set for in Rule 2A and Addendum B of these Rules.

## SEC. 3. Application and Admission

(a) Each applicant to become an AIP Member shall complete and deliver to the Corporation such documents and information as set forth in Rule 2A of these Rules.

The Corporation shall approve an application to become an AIP Member as set forth in Rule 2A of these Rules.

## SEC. 4. Eligible Alternative Investment Products

(a) Upon application by one or more AIP Members, the Corporation may designate an alternative investment product as eligible for processing through the AIP Service (an "Eligible AIP Product"). The Corporation shall maintain a list of all Eligible AIP Products processed through the Corporation. Alternative investment products that may be designated as Eligible AIP Products include the following: securities issued by private pooled investment vehicles (including hedge funds and private equity funds, among others), interests in commodity pools, securities issued by funds of funds, real estate investment trust securities, managed futures, managed currency products and such other alternative investment products as shall be approved by the Corporation from time to time. An Eligible AIP Product may be a security registered under the Securities Act of 1933, as amended, or a security exempt from registration thereunder

(b) The Corporation may elect to decline to designate an alternative investment product as an Eligible AIP Product, or may withdraw an alternative investment product's designation as an Eligible AIP Product, at any time it deems it to be in the interests of the Corporation and its participants.

(c) By submitting an Eligible AIP Product for processing through the Corporation, an AIP Manufacturer is representing to the Corporation that the offer and sale of such Eligible AIP Product complies with all applicable requirements under federal securities law and such other laws as may apply, whether state, federal or those of a jurisdiction outside the United States, for so long as such Eligible AIP Product is processed through the Corporation.

## SEC. 5. Obligations and Rights applicable to AIP Member

(a) The rights and obligations applicable to an AIP Member shall be as set forth in these Rules as applicable to an AIP Member or Limited Member.

(b) An AIP Member shall not be required to pay a Clearing Fund contribution to the Corporation in respect of its use of AIP Services.

(c) An AIP Member shall not be responsible for loss allocations or other loss or liability to the Corporation pursuant to the Rules or Procedure of the Corporation, except for such losses or liabilities as are set forth expressly in this Rule.

(d) The Corporation shall not be a party to a transaction (whether the communication of data or payments of money) processed through the AIP Service and shall not assume any obligations or liability in connection therewith, other than the obligation to pay AIP Credit Balances and AIP Adjusted Credit Balances in accordance with this Rule.

## SEC. 6. Transmission of AIP Data

(a) AIP Data transmitted through the AIP Service may include data relating to subscriptions and purchases; redemptions, withdrawals and tender offers; commissions and other fees; distributions; exchange transactions; transfers; position reporting; product information; account maintenance, valuation, and activity and such other data as may be established by the Corporation from time to time.

(b) AIP Data must be submitted to the Corporation in such formats and by such times as established by the Corporation from time to time, and, depending upon the type of AIP Data submitted, may require a response from the receiver of AIP Data.

The Corporation will review AIP Data received from AIP Members for such information as the Corporation determines from time to time to be necessary. If the AIP Data does not contain the information required by the Corporation, the Corporation will reject the AIP Data and will advise the appropriate AIP Member in such form and by such time as established by the Corporation from time to time.

If the AIP Data appears to contain the information required by the Corporation, the Corporation will transmit the AIP Data to the appropriate AIP Member in such form and by such time as established by the Corporation from time to time, subject to any rights the Corporation may have under any applicable Rules and Procedures of the Corporation.

Pursuant to the procedures established by the Corporation from time to time, the Corporation will notify, in such form and at such times as established by the Corporation from time to time, the AIP Member in respect of certain AIP Data which requires a response, if no such response has been received by the Corporation.

Submission of certain AIP Data may require a confirming instruction from the contra side AIP Member.

(c) Pursuant to the procedures established by the Corporation from time to time, an AIP Member submitting AIP Data can withdraw certain submitted AIP Data by submitting a withdrawal instruction to the Corporation, in such form and by such time as established by the Corporation from time to time. Withdrawal of certain AIP Data may require a confirming instruction from the contra side AIP Member. Upon receipt of a properly submitted withdrawal instruction, the Corporation will (i) delete the withdrawn AIP Data and (ii) notify the appropriate party of the withdrawn AIP Data in such form and by such time as established by the Corporation from time to time.

(d) Notwithstanding the foregoing, nothing prohibits an AIP Member from requiring data or information in connection with transactions in Eligible AIP Products in addition to AIP Data that has been transmitted through the Corporation.

(e) Submission of AIP Data to, or alteration or withdrawal of AIP Data from, the Corporation shall not relinquish, extinguish or affect any legal or regulatory right or obligation of the AIP Member existing outside of this Rule.

(f) The Corporation will not be responsible for the completeness or accuracy of the AIP Data received from or transmitted to any AIP Member through the AIP Service, nor shall the Corporation, absent gross negligence on the Corporation's part, be responsible for any errors, omissions or delays that may occur in the transmission of AIP Data to or from any AIP Member.

#### SEC. 7. Settlement of AIP Payments

(a) The Corporation may provide a facility for the settlement of certain payments between AIP Members in respect of Eligible AIP Products ("AIP Payments") pursuant to such settlement procedures as the Corporation shall adopt. AIP Payments may include amounts to be transmitted in respect of subscriptions and purchases; redemptions, withdrawals and tender offers; commissions and other transaction fees; distributions; exchange transactions; transfers; and such other transactions in connection with the processing and settlement of transactions in Eligible AIP Products as the Corporation may determine from time to time. Settlement of AIP Payments through the Corporation shall be in same day funds, effected in accordance with the provisions of this Rule and such procedures as the Corporation may establish from time to time. The Corporation shall not guarantee the payment of AIP Payments to any AIP Member. Settlement of all payments and transactions in respect of Eligible AIP Products which do not settle through the facilities of the Corporation are the responsibility of the parties thereto and are not subject to the provisions of this Rule.

(b) An AIP Member may initiate an instruction for the settlement of AIP Payments on a certain date by submitting AIP Data that indicates settlement of AIP Payments is to take place through the Corporation pursuant to the AIP Service, in

accordance with procedures established by the Corporation from time to time. Unless otherwise stated in such procedures, settlement of AIP Payments shall require a concurring instruction from the contra side AIP Member.

Unless otherwise stated in procedures established by the Corporation, AIP Payments submitted for settlement through the Corporation on a Business Day designated by the AIP Member (the "Settlement Date") shall be submitted (and, if applicable, agreed by the contra side AIP Member), no later than the times established by the Corporation for this purpose on the Business Day prior to Settlement Date ("Settlement Date minus 1"). The references to Settlement Date in this Rule refer to settlement of AIP Payments through the settlement facilities of the Corporation and do not define the settlement date of payment or delivery obligations between the parties for purposes outside of the AIP Service.

(c) The Corporation shall maintain both a credit balance and a debit balance for each AIP Member. All AIP Payment amounts made through the AIP Service shall be credited and debited, as applicable, to the respective credit and debit balances of the AIP Members involved in the AIP transaction, for settlement on Settlement Date. Posting of a credit to an AIP Member's credit balance shall always be accompanied by a corresponding debit posted to the debit balance of the contra side AIP Member. Credit balances and debit balances posted to any AIP Member's respective account will not be netted or offset against one another, but will be maintained on a gross credit and gross debit basis. AIP Payments will not be netted or offset against any other type of transaction settled through the facilities of the Corporation.

(d) An AIP Member submitting or receiving an AIP Payment may delete such AIP Payment from settling through the Corporation by submitting a deletion instruction to the Corporation in accordance with such procedures as are established by the Corporation from time to time. Unless otherwise stated in the procedures established by the Corporation, a deletion instruction will require a concurring instruction from the contra side AIP Member. To be effective, such deletion instruction must be submitted (and, if applicable, agreed by the contra side AIP Member) no later than Settlement Date minus 1. Upon receipt of a properly submitted deletion instruction, the Corporation will delete the appropriate credit and debit amounts from the respective balances of the AIP Members involved in the transaction.

(e) On Settlement Date minus 1, at the time established by the Corporation for this purpose, the Corporation shall notify each AIP Member and its AIP Settling Bank of such respective aggregate gross credit balance and aggregate gross debit balance amounts that are anticipated for settlement of its AIP Payment Amounts on Settlement Date, together with details on the credits and debits comprising such aggregate balances (the "Preliminary Settlement Report").

(f) The Corporation shall establish a modification period after the Preliminary Settlement Report is issued, during which an AIP Member may send instructions to delete any particular AIP Payment in accordance with procedures established by the

Corporation. Certain deletion instructions may require submission of an agreement instruction by the contra side AIP Member. At the conclusion of the modification period, at the time established by the Corporation for this purpose, the Corporation shall notify each AIP Member of its respective aggregate gross debit and aggregate gross credit balances for settlement (“AIP Debit Balance” and “AIP Credit Balance”, respectively), together with details on the credits and debits comprising such aggregate balances (“Final Settlement Reports”).

(g) Settlement shall take place in same day funds in accordance with the Corporation’s procedures applicable to AIP settlement. Unless otherwise approved by the Corporation, settlement payments shall be transmitted through AIP Settling Banks.

AIP Debit Balances shall be payable on Settlement Date, at the time established by the Corporation for this purpose. On Settlement Date, subsequent to the time at which AIP Debit Balances are payable, the Corporation shall pay AIP Credit Balances to the applicable contra side AIP Members for which AIP Debit Balances were received by the Corporation, and shall pay AIP Adjusted Credit Balances if and to the extent applicable under the following paragraph.

At any time that the Corporation fails to receive payment in the amount of an AIP Member’s AIP Debit Balance, the Corporation will reverse the corresponding amounts previously credited to the AIP Credit Balances of the contra side AIP Members. The Corporation shall notify the contra side AIP Members of the amounts and details of such credit reversals and shall issue a revised settlement report in respect of the AIP Credit Balances as so reduced (“AIP Adjusted Credit Balances”).

A failure in payment of an AIP Settlement Debit Balance shall not be deemed a default in payment to the Corporation under the Rules of the Corporation or otherwise. The Corporation may establish fees for such late payment or nonpayment and may establish procedures for limiting or excluding an AIP Member from using the Corporation’s AIP Services in the event of a pre-established number of instances of late payment or nonpayment, pursuant to procedures established by the Corporation on a nondiscriminatory basis and communicated to AIP Members in advance of effectiveness.

(h) Unless otherwise permitted by the Corporation, each AIP Member shall appoint an AIP Settling Bank for the purpose of settling with the Corporation on behalf of the AIP Member pursuant to an AIP Settling Bank Agreement. Settlement shall occur in same-day funds, in accordance with the procedures established by the Corporation. An AIP Settling Bank may settle for one or more AIP Members, and may settle for itself. An AIP Settling Bank may refuse to settle for an AIP Member by notifying the Corporation in the manner and prior to the time on Settlement Date set forth in the AIP settlement procedures.

(i) At any time, the Corporation may prohibit any payment from settling through the Corporation if the Corporation, in its discretion, determines that such action

is necessary for the protection of the Corporation and its Members. The Corporation shall not be liable for delays in settlement due to operational factors or otherwise.

#### SEC. 8. Document Transmission

(a) The Corporation may provide a service to enable AIP Members to electronically transmit imaged documents, signatures and forms relating to alternative investment products, including without limitation documents relating to customers of an AIP Member (“AIP Attachments”). AIP Members may, by agreements among themselves, establish parameters regarding AIP Attachments such as requirements, obligations and the legal effect of the transmission of AIP Attachments as between themselves. The Corporation shall not review AIP Attachments, shall not be a party to any applicable agreements between AIP Members relating to AIP Attachments, and shall not provide repository services for AIP Attachments.

#### SEC. 9. Designation of “Broker-Controlled” and “Customer-Controlled” Accounts

**(a) AIP Data includes the designation of a specified AIP Distributor’s customer account as “broker-controlled” or “customer-controlled” in respect of an AIP Manufacturer’s Eligible AIP Product.**

**(b) For so long as any specified customer account is designated as “broker-controlled” by the applicable AIP Manufacturer, such AIP Manufacturer shall be making continual and ongoing representations and assurances to the controlling AIP Distributor with respect to such customer account that:**

- (i) the Eligible AIP Product securities held (or to be held) in such customer account are not subject to any right, charge, security interest, lien or claim of any kind in favor of such AIP Manufacturer or any person claiming through such AIP Manufacturer;**
- (ii) to the knowledge of such AIP Manufacturer, there are no substantial problems of an operational nature which such AIP Manufacturer is experiencing or which may endanger the interest of investors in the Eligible AIP Product;**
- (iii) the Eligible AIP Product securities held (or to be held) in such customer account are registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, are exempt from such registration, or are not required to be registered;**
- (iv) the Eligible AIP Product securities held in such customer account (or to be held in such account) are registered on the books and records of such AIP Manufacturer, or its designee, in the name of the controlling AIP Distributor, on behalf of its customer;**
- (v) in the case of Eligible AIP Product securities issued outside of the United States, such AIP Manufacturer does not require the controlling AIP Distributor, or any of its customers, to pay any fees**

- other than for safe custody or administration as a condition for the transfer of the Eligible AIP Product securities; and
- (vi) such AIP Manufacturer understands and acknowledges that the controlling AIP Distributor may be relying on the above representations in order to establish custody in accordance with Securities and Exchange Commission Rule 15c3-3, and that failure to comply with the above representations may require that the controlling AIP Distributor remove the Eligible AIP Product securities from the applicable customer's brokerage account.

The above AIP Manufacturer representations and assurances are collectively referred to in this Rule as the "AIP Manufacturer Representations and Assurances".

(c) Each AIP Distributor that is a Registered-Broker Dealer and that is relying on a specified AIP Manufacturer's Representations and Assurances with respect to a customer's account, shall, for so long as the applicable "broker-controlled" designation remains in place, be continually stating that:

- (i) such AIP Distributor carries those Eligible AIP Product securities "long" in such customer's account;
- (ii) such AIP Distributor reflects all share positions of the applicable Eligible AIP Product separately in such AIP Distributor's securities records or ledgers maintained pursuant to Securities and Exchange Commission Rule 17a-3;
- (iii) such AIP Distributor maintains in a separate file a current list of all AIP Manufacturers of which Eligible AIP Product securities are carried on such AIP Distributor's books and records, including the name, telephone number and address of a contact person at each AIP Manufacturer; and
- (iv) such AIP Distributor is not aware of any substantial problems of an operational nature which the AIP Service or the applicable AIP Manufacturer or issuer (if different) may be experiencing and which may endanger the interests of the customer.

The above AIP Distributor statements are collectively referred to in this Rule as the "AIP Distributor Statements".

(d) If an account designation within the AIP Service is changed from "broker-controlled" to "customer-controlled," the above AIP Manufacturer Representations and Assurances and AIP Distributor Statements shall no longer apply to the relevant AIP Members.

(e) Each AIP Distributor and each AIP Manufacturer agrees that any dispute arising between them under this Section shall be resolved directly between them, and that the Corporation shall not be made a party to any such dispute and shall have no responsibility with respect to the resolution thereof.

**SEC. 10.** Limitations on Liability

(a) Notwithstanding any other provision in the Rules of the Corporation: The Corporation will not be liable for any action taken, or any delay or failure to take any action, hereunder or otherwise to fulfill the Corporation's obligations to its AIP Members, other than for losses caused directly by the Corporation's gross negligence, willful misconduct, or violation of federal securities laws for which there is a private right of action. Under no circumstances will the Corporation be liable for the acts, delays, omissions, bankruptcy, or insolvency, of any third party, including, without limitation, any depository, custodian, sub-custodian, AIP Settling Bank, data communication service or delivery service ("Third Party"), unless the Corporation was grossly negligent, engaged in willful misconduct, or in violation of federal securities laws for which there is a private right of action in selecting such Third Party.

(b) Under no circumstances will the Corporation be liable for any indirect, consequential, incidental, special, punitive or exemplary loss or damage (including, but not limited to, loss of business, loss of profits, trading losses, loss of opportunity and loss of use) howsoever suffered or incurred, regardless of whether the Corporation has been advised of the possibility of such damages or whether such damages otherwise could have been foreseen or prevented.