

SR-NASD-98-82 and should be submitted by December 8, 1998.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-30717 Filed 11-16-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40657; File No. SR-NSCC-98-06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Modifying the Automated Customer Account Transfer Service

November 10, 1998.

On June 5, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSCC-98-06) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and on June 17, 1998, amended the proposed rule change.¹ Notice of the proposal was published in the **Federal Register** on October 5, 1998.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

NSCC's automated customer account transfer service ("ACATS") enables members of NSCC to effect automated transfers of customer accounts among NSCC members.³ The proposed rule change expands the types of eligible ACATS participants and the kinds of accounts that may be transferred. Additionally, it permits NSCC to transmit date to clearing agencies in

order to expand the automated settlement capabilities of ACATS.⁴

A. Users

Currently, only NSCC members, primarily broker-dealers, may participate in ACATS. The proposed rule change permits a qualified securities depository ("QSD") to also effect customer account transfers through ACATS on behalf of its participants.⁵ Thus the proposed rule change permits ACATS transfers between two participants of a QSD and between a QSD participant and an NSCC member.

B. Transfers

The proposed rule change sets forth three categories of ACATS transfers: (1) Receiving members⁶ initiated full account transfers; (2) delivering member⁷ initiated partial account transfers; and (3) receiving member initiated partial account transfers. Categories one and two, while previously available are modified by the proposal. Category three is a new addition to ACATS.

1. Receiving Member Initiated Full Account Transfers

Under the revised ACATS, a receiving member is required to submit transfer information to NSCC in automated format. The "transfer initiation request" paper form is no longer accepted by NSCC.⁸

Currently, once a delivering member rejects a receiving member's transfer request, the receiving member is required to reinitiate the ACATS process. The rule filing provides that in response to certain enumerated categories of delivering member rejections, the receiving member may make corrections to its customer account transfer request. This allows a receiving member to adjust its customer account transfer request by submitting

corrections to NSCC within one business day after notification of a delivering member's rejection. A delivering member must then either reject the adjusted transfer request by submitting a new rejection to NSCC or submit to NSCC detailed customer account asset data. If the delivering member fails to respond to the adjusted transfer request within the time frame established by NSCC, NSCC will delete the request from ACATS and will notify the receiving and delivering members.

To the extent that a receiving member determines that any information as reported on the transfer initiation request is inaccurate, the rule filing provides that the receiving member may cause an adjustment to be made by submitting corrected data to NSCC. Similarly, if a delivering member determines that the account number of its customer as reported on the transfer initiation request is inaccurate, it may cause that adjustment to be made by submitting corrected data to NSCC.

Under the revisions, upon submission of customer account asset data, the delivering member is required to specify the quantity of mutual fund services eligible book share mutual fund assets ("mutual fund assets") to be processed, if any, and to indicate whether the transfer is a full or a partial transfer. A full transfer will cause all mutual fund assets, whether greater or lesser than the quantity specified, to be transferred. A partial transfer will cause only the quantity specified or, if the account has less than such amount, such lesser amount to be transferred. Since the actual quantity registered on the records of the mutual fund may be adjusted between the time of the transfer request submission and settlement of the ACATS transfer (due for example to reinvested dividends or capital gains), this modification provides ACATS participants with a means to transfer the quantity of assets available on settlement date (*i.e.*, a full transfer). In addition, the rule filing states that if the transfer is not confirmed or rejected by the mutual fund processor or fund member within the time frame established by NSCC, it will be deleted from the Fund/Serv system⁹ by NSCC. As a result, such transfer requests will no longer pend in NSCC's systems for an indefinite period of time.

The proposed rule change permits a receiving member to accelerate the transfer of a customer account by

⁴ NSCC stated that another reason for the redesign is to make the ACATS system Year 2000 compliant.

⁵ QSD is a defined term in NSCC's Rule 1 as a registered clearing agency, pursuant to section 3(a)(23) of the Act, that has entered into an agreement with NSCC pursuant to which it will act as a securities depository for NSCC and will effect book-entry transfers of securities for NSCC with respect to NSCC's continuous net settlement system. The Depository Trust Company is the only registered clearing agency that has entered into such an agreement with NSCC.

⁶ The proposed rule change defines the receiving member as a NSCC member or QSD to who a customer's full account is to be transferred.

⁷ The proposed rule change defines the delivering member as the NSCC member or QSD which currently has the account.

⁸ A receiving member will be able to continue to utilize the facilities of NSCC to submit physical documentation that a delivering member may need in order to act upon the receiving member's request.

⁹ For a complete description of NSCC's Fund/SERV system refer to Securities Exchange Act Release No. 31937 (March 1, 1993), 58 FR 12609 (File No. SR-NSCC-92-14) (order approving proposed rule change regarding Fund/SERV system).

⁶ 17 CFR 200-30-3(a)(2).

¹ 15 U.S.C. 78s (b)(1).

² Securities Exchange Act Release No. 40487 (September 28, 1998), 63 FR 53479.

³ ACATS complements New York Stock Exchange ("NYSE") and National Association of Securities Dealers ("NASD") rules that require NYSE and NASD members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames. For a description of ACATS as it was before the revisions approved by this order, refer to Securities Exchange Act Release No. 22481 (September 30, 1985), 50 FR 41274 (SR-NSCC-85-07); Securities Exchange Act Release No. 34879 (October 21, 1994), 59 FR 54229 (SR-NSCC-94-13); and NSCC Rule 50.

accepting the report detailing the customer account asset data on the business day it receives the report from NSCC. However, under these new circumstances, if a delivering member submits a timely adjustment to an account for which an accelerated acceptance has been received by NSCC, it will cause such accelerated acceptance to be void.

To the extent an ACATS transfer is between two NSCC members, the proposed rule change differentiates between the processing of continuous net settlement ("CNS") eligible and non-CNS eligible items that are otherwise eligible at The Depository Trust Company ("DTC"). The rule filing does not change the processing of CNS eligible items. The proposed rule change provides that NSCC will produce ACATS instruction files for all non-CNS eligible items that are otherwise eligible at DTC. The instruction files will be similar to DTC deliver orders (*i.e.*, naming the receiving and delivering participants, the quantity of the securities to be delivered, and the value for such delivery). Any such deliveries are subject to the rules of DTC. If a delivering member does not want instruction files to be submitted to DTC, it may request at the time the account asset details are submitted or pursuant to a standing instruction filed with NSCC that separate receive and deliver instructions be produced. In such instance, it is up to the delivering member to initiate the delivery of the asset.

Under the proposed rule change, foreign currency assets may be transferred from a delivering member to a receiving member. ACATS will produce receive and deliver instructions but will not specify a value for such assets.

To the extent that either a receiving member or a delivering member (or both) is a participant of a QSD, such transfer will be processed as ACATS transfers with NSCC members as both the receiving member and the delivering member with the exceptions specified below:

i. For all DTC eligible assets, other than United States dollar cash balances ("cash"), assets covered by a standing instruction filed by a delivering member with NSCC, and assets for which a receive/deliver instruction request was received from a delivering member at the time asset details were submitted, NSCC will issue an instruction file to DTC specifying the quantity of each asset to be delivered with a deliver value of zero.

ii. For all non-DTC eligible assets (other than assets available at other

registered clearing agencies and cash), assets covered by standing instruction filed by a delivering member with NSCC and asset for which a receive/deliver instruction request was received from a delivering member at the time asset details were submitted, NSCC will produce receive and deliver instructions naming the receiving member and the delivering member. All such receive and deliver instructions will specify no value. Unlike a transfer between NSCC members, NSCC will not debit and credit the value of assets being transferred between participants of a QSD or between a participant of a QSD and a member of NSCC.¹⁰

iii. If the account has a cash balance, NSCC will issue an instruction to DTC indicating the participants to be debited and credited and the corresponding amount.

2. Delivering Member Initiated Partial Account Transfers

The proposed rule change permits a delivering member to initiate some types of partial account transfers. In addition to the transfer of residual credit positions, delivering members are able to: Deliver a partial account (in the form of cash or securities); initiate the delivery of a position which was purchased by the delivering member for the benefit of a customer's account and which the customer wants custodied at the receiving member; obtain the return of cash previously paid with respect to fail positions for which delivery is unable to be completed;¹¹ and obtain the return of cash or securities mistakenly delivered through ACATS other than mutual fund assets and positions eligible for processing at The Options Clearing Corporation ("OCC"), the Government Securities Clearing Corporation ("GSCC"), or the Participants Trust Company ("PTC").¹²

A delivering member may initiate a transfer by submitting to NSCC those transfer details that are required by NSCC. NSCC will reject the transfer if the details contain an edit or format error. NSCC will notify the delivering member if a transfer is rejected in which case the delivering member must

¹⁰ Under the current ACATS rule, the delivering firm is debited the current market value of the assets and the member receiving firm is credited the current market value of the assets. The member delivering firm recovers its money by making delivery of the assets. Under the proposed rule change, whenever a QSD participates in the ACATS process, the assets will be delivered on a no value basis.

¹¹ This service may only be initiated to the extent that the fail is between two NSCC members.

¹² This service may only be initiated to the extent that the delivery is between two NSCC members.

reinitiate the transfer as if it had never been previously submitted.

A receiving member may reject the transfer by submitting information on the same day as the transfer request is received. No action will be required by the receiving member if it determines to accept the transfer. A receiving member may not submit corrections, and a delivering member may not make adjustments to such transfer request.

Settlement date is one business day following the day NSCC receives the transfer request unless the request includes option assets which are eligible for processing at OCC in which case the settlement date for all assets shall be two business days following the day NSCC receives the transfer request.

3. Receiving Member Initiated Partial Account Transfers

Under the proposed rule change, a receiving member may submit a request to initiate the transfer of a partial customer account. The request will be delivered by NSCC to the delivering member on the same day that it is received by NSCC. Each day NSCC will produce a report that indicates all of the requests received by NSCC that day. A delivering member may respond to a receiving member's request for a partial account transfer at any time by the delivering member initiating a partial account transfer as described in the delivering member initiated transfer section above. No action is required by the delivering member if it determines not to respond to a request, and no transfer will occur.

C. Agreement With DTC

NSCC is entering into an agreement with DTC to permit DTC to obtain access to ACATS on behalf of its participants.¹³ NSCC's agreement with DTC will permit ACATS to be used for the transfer of accounts between two DTC participants or between a DTC participant and an NSCC member.

D. Linkage Agreements

NSCC currently has an agreement in place with OCC regarding the transfer of options positions within customer accounts being transferred pursuant to ACATS. The agreement provides that NSCC may send instructions to OCC for the delivery and receipt of options positions on behalf of ACATS participants that are members of NSCC as well as of OCC.

In order to broaden the types of assets which can be transferred through

¹³ This agreement will be similar to the current agreement between NSCC and DTC regarding DTC's access to NSCC's mutual funds services.

ACATS based on instructions from NSCC, the proposed rule change permits NSCC to establish links with other registered clearing agencies ("RCA"), such as DTC, PTC, and GSCC. Once an agreement has been reached with the applicable RCA, to the extent a transfer involves an asset position eligible for delivery at such RCA and both the receiving member and delivering member have an account there, NSCC will issue instructions to the applicable RCA indicating the delivering or receiving participant and the quantity of assets to be delivered and received. The instructions will not specify a value unless the transfer is between two members of NSCC and the assets to be transferred are government securities (where a nominal value shall be specified) ¹⁴ or mortgage-backed securities. If the assets are mortgage-backed securities, on settlement date NSCC will debit the deliverer the value and credit the receiver the value of the assets.

E. Indemnification Provision

The proposed rule change includes indemnification provisions similar to those currently in use by users of ACATS. While the revised rule includes such provisions, it does not preclude participants from entering into separate indemnification arrangements which are broader than those contained in the rule.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F).¹⁵ Section 17A(b)(3)(A)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that NSCC's rule change meets this standard because the changes to ACATS such as the ability to electronically transfer accounts not only to and from broker-dealers but not to and from banks and other financial institutions, the ability to do partial transfers, the ability to make certain corrections to instructions, and the ability to electronically transfer U.S. government and mortgage-backed securities, should provide a more efficient method for the transfer of customer assets and should

encourage use by more financial institutions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of sections 17A(b)(3) (A) and (F) 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-98-06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland, Deputy Secretary.

[FR Doc. 98-30716 Filed 11-16-98; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3146]

State of Kansas

As a result of the President's major disaster declaration on November 5, 1998, and an amendment thereto on November 9, 1998, I find that Butler, Chase, Coffey, Cowley, Franklin, Harvey, Lyon, Neosho, Sedgwick, Sumner, and Wilson counties in the State of Kansas constitute a disaster area due to damages caused by severe storms and flooding which occurred beginning October 30, 1998 and continuing. Applications for loans for physical damages may be filed until the close of business on January 4, 1999, and for loans for economic injury until the close of business on August 5, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Allen, Anderson, Bourbon, Chautauqua, Crawford, Douglas, Elk, Greenwood, Harper, Kingman, Johnson, Labette, Linn, Marion, McPherson, Miami, Montgomery, Morris, Osage, Reno, Wabaunsee, and Woodson in the State of Kansas; and Grant, Kay, and Osage in the State of Oklahoma may be filed until the specified date at the above location.

The interest rates are:

Table with 2 columns: Physical Damage: and Percent. Rows include Homeowners with credit available elsewhere (6.750), Homeowners without credit available elsewhere (3.375), Businesses with credit available elsewhere (8.000), Businesses and non-profit organizations without credit available elsewhere (4.000), Others (including non-profit organizations) with credit available elsewhere (7.000), For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere (4.000).

The number assigned to this disaster for physical damage is 314611 and for economic injury the numbers are 9A5100 for Kansas and 9A5200 for Oklahoma.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 10, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98-30662 Filed 11-16-98; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3145]

State of Texas; Amendment #2

In accordance with a notice from the Federal Emergency Management Agency dated November 6, 1998, the above-numbered Declaration is hereby amended to include the Counties of Atascosa, Brazoria, Galveston, Liberty, Matagorda, Nueces, and San Jacinto in the State of Texas as a disaster area due to damages caused by severe storms, flooding, and tornadoes which occurred October 17 through October 31, 1998.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Frio, Hardin, Jefferson, Jim Wells, Kleberg, La Salle, McMullen, Polk, and Trinity in the State of Texas. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is December 19, 1998 and for economic injury the termination date is July 19, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

¹⁴ On June 17, 1998, NSCC amended the proposed rule change (File No. NSCC-98-06) to include the transfer of government securities where a nominal value is specified.

¹⁵ 15 U.S.C. 78q-1(b)(3)(F) (1988).

¹⁶ 17 CFR 200.30-3(a)(12).