

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96327; File No. SR-NSCC-2022-014)

November 16, 2022

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Make Certain Changes to Addendum A to Adopt Fees for the AIP Document Transfer Service as part of AIP Attachments

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 14, 2022, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and subparagraph (f)(2)⁴ of Rule 19b-4 thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change of NSCC consists of modifications to Addendum A (Fee Structure) (“Addendum A”) of NSCC’s Rules & Procedures (“Rules”) to adopt fees for the AIP document transfer service (“Document Transfer”) as part of AIP Attachments

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

set forth in the Alternative Investment Product services (“AIP”), as described in greater detail below.⁵

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Overview of the Proposed Rule Change

The purpose of this proposed rule change is to adopt fees for Document Transfer. Document Transfer is a result of enhancements of the AIP Attachments service. The proposed fees will be \$1 per item, per side, as discussed below, and is designed to be consistent with NSCC’s cost-based plus markup fee model.⁶

⁵ Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Rules, available at http://dtcc.com/~//media/Files/Downloads/legal/rules/nscc_rules.pdf.

⁶ NSCC has in place procedures to control costs and to regularly review pricing levels against costs of operation. NSCC’s fees are cost-based plus a markup as approved by its Board of Directors. This markup is applied to recover development costs and operating expenses, and to accumulate capital sufficient to meet regulatory and economic requirements. See NSCC Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures, available at

Background

AIP, which was established in 2007, is a standardized, trading and reporting platform that links the alternative investments industry to securely and efficiently exchange data and money relating to alternative investment products, including hedge funds, funds of funds, private equity, non-traded real estate investment trusts, managed futures and limited partnerships.⁷ One of the services offered within AIP is a document transmission service, referred to as AIP Attachments in the Rules, which enables AIP Members to electronically transmit imaged documents, signatures and forms relating to alternative investment products.⁸

AIP Attachments has been in the Rules since the inception of AIP but has not been used by AIP Members in production, and fees for AIP Attachments have previously not been developed or placed in the Rules. Initially, the service was marketed with the name “paper workflow” and was a basic document facility designed to automate the transmission of imaged hard-copy documents between AIP Manufacturers and AIP Distributors.⁹ Certain AIP Members did test the capability of paper workflow, but the service was not used by AIP Members in production, and fees were not developed for the service.

https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/NSCC_Disclosure_Framework.pdf, at 121.

⁷ See Securities Exchange Act Release No. 57813 (May 12, 2008), 73 FR 28539 (May 16, 2008) (SR-NSCC-2007-12) (Order Granting Approval of a Proposed Rule Change To Provide a New Alternative Investments Products Service) (“Initial Filing”).

⁸ See *id.* See also Section 8 of Rule 53, *supra* note 5.

⁹ See Initial Filing, *supra* note 7.

In 2018, NSCC enhanced AIP Attachments to, among other things, provide that documents that were transmitted pursuant to AIP Attachments would be tied to specific transactions, and the re-designed AIP Attachments was marketed as “E-Doc.” Like paper workflow, however, AIP Members tested the capability of E-Doc, but the service was not used by AIP Members in production, and fees were not developed for the service.

During the COVID-19 pandemic, new challenges were presented to AIP Members relating to the transfer of paper documents as a result of work from home requirements for employees of AIP Members and the inability of AIP Members to use certain industry services that had been used to transmit paper documents prior to the pandemic. As a result, NSCC began discussions again with AIP Members about enhancing AIP Attachments to fulfill the needs of AIP Members with respect to the transfer of documents. As a result of those discussions, NSCC enhanced AIP Attachments to, among other things, make the requirements for the use of AIP Attachments more user friendly. In addition, AIP Attachments has been enhanced to provide the ability of AIP Members to transfer documents that are tied to specific AIP transactions and to transfer standalone documents that are not tied to specific AIP transactions. NSCC would market the new enhanced AIP Attachments as “Document Transfer.”

In order to offset the costs of building the enhancements, NSCC is proposing to add fees for the service via a simple billing structure of \$1 per item, per side. NSCC believes this billing structure will align the fees with the costs of services provided by NSCC by setting the fees so that the revenue received by NSCC would be sufficient to recover the costs of building the service.

Proposed Change to Addendum A

To effectuate the proposed Document Transfer fees, Section IV.L. of Addendum A would be updated to include a new subsection 4. for fees relating to Document Transfer, which would be \$1.00 per item, per side.

Expected Member/NSCC Impact

The proposed fee changes would impact all users of the service. The fees are intended to cover the costs of developing Document Transfer in accordance with NSCC's cost-based plus markup fee model¹⁰ and expected client volumes based on discussions with AIP Members. Following implementation of the fees, assuming revenues and expenses remain constant,¹¹ NSCC anticipates recouping the costs of enhancing AIP Attachments for Document Transfer within approximately three years of implementing the fees and expects to have a positive operating margin with respect to Document Transfer thereafter.

Implementation timeline

NSCC expects to implement the proposed rule changes on November 17, 2022. As proposed, a legend would be added to Addendum A stating there are changes that became effective upon filing with the Commission but have not yet been implemented.

The proposed legend also would include November 17, 2022 as the date on which such

¹⁰ See supra note 6.

¹¹ It is not certain that revenues and expenses will remain constant. Costs of providing the service may change, for instance, if AIP Members request service enhancements or NSCC's technology costs change. In addition, revenues may change depending on the number of users of the service. NSCC regularly reviews pricing levels against costs of operation. As with its other services, if NSCC determines that its operating margin is too high or too low, NSCC would propose changes to pricing levels accordingly.

changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would be automatically removed from Addendum A.

2. Statutory Basis

NSCC believes the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act¹² and Rule 17Ad-22(e)(23)(ii),¹³ as promulgated under the Act, for the reasons set forth below.

Section 17A(b)(3)(D) of the Act¹⁴ requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. NSCC believes the proposed fees would be allocated equitably among AIP Members that use Document Transfer. NSCC would apply a fee of \$1.00 per side for each item submitted. NSCC believes that the proposed fee changes are reasonable because they were developed in consideration of the expected investment costs to develop the Document Transfer enhancements, the projected annual costs to run the service (including both technology and non-technology run costs), and projected revenues for the service, and are expected to recover such investment and operating costs in an appropriate timeframe. NSCC notes that once the proposed Document Transfer fees are implemented, the Document Transfer fees would be periodically reviewed under

¹² 15 U.S.C. 78q-1(b)(3)(D).

¹³ 17 CFR 240.17Ad-22(e)(23)(ii).

¹⁴ 15 U.S.C. 78q-1(b)(3)(D).

NSCC's procedures to determine whether it is continuing to appropriately control its costs and to regularly review pricing levels against costs of operation.¹⁵

Rule 17Ad-22(e)(23)(ii) under the Act¹⁶ requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency. The proposed fees for Document Transfer would be clearly and transparently published in Addendum A of the Rules, which are available on a public website,¹⁷ thereby enabling Members to identify the fees associated with participating in the Document Transfer service. As such, NSCC believes the proposed rule change is consistent with Rule 17Ad-22(e)(23)(ii) under the Act.¹⁸

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe the proposed rule change would impose any burden, or have any impact, on competition. The proposed fees would apply equally to all AIP Members that use Document Transfer. NSCC believes that the proposed Document Transfer fees would not advantage or disadvantage any particular member or user of Document Transfer, or unfairly inhibit access to Document Transfer. NSCC notes that members may continue to engage in document transmission outside of Document Transfer if they choose.

¹⁵ See supra note 6.

¹⁶ 17 CFR 240.17Ad-22(e)(23)(ii).

¹⁷ See supra note 5.

¹⁸ 17 CFR 240.17Ad-22(e)(23)(ii).

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NSCC has conducted outreach to AIP Members to provide them with notice of the proposed fees.

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received by NSCC, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

NSCC reserves the right not to respond to any comments received.

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)¹⁹ of the Act and paragraph (f)²⁰ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSCC-2022-014 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

¹⁹ 15 U.S.C 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-NSCC-2022-014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (<https://dtcc.com/legal/sec-rule-filings.aspx>). All comments received 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 File Number SR-NSCC-2022-014 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12).