

Settling banks that also act as settling banks for DTC participants have to sign a Settler Agreement with the FRB designating DTC as their NSS settlement agent. Accordingly, these settling banks will not be required to sign new Settler Agreements to cover NSCC's NSS settlement. Instead, as provided in NSCC Procedure VIII, the Settler Agreements they provide to DTC for delivery to the FRB designating DTC as their NSS settlement agent will, upon the approval and effectiveness of NSCC's proposed rule change, be deemed to include the settling bank's NSCC settlement obligations as well as its DTC settlement obligations.

As is currently required, each settling bank will be required to acknowledge its NSCC net-net balance at the end of the day. However, any settling bank that is a Member and settles solely for its own account may elect to not acknowledge its net-net settlement balance at the end of the day.<sup>7</sup> This option will not be made available to settling banks that settle for others because the acknowledgement process includes the option to refuse to pay for a participant for whom the settling bank provides settlement services. Unless a settling bank has elected not to acknowledge its net-net settlement balance as provided above, DTC will not send a settling bank's net-net debit balance to a FRB for collection until the settling bank has acknowledged its balance.

As NSCC's settlement agent, DTC will send a "preadvice" to each settling bank, notifying the settling bank that DTC is about to send its NSS transmission to the FRB. If a settling bank does not have sufficient funds in its FRB account to enable DTC, as settlement agent, to debit the full amount of its settlement balance or should NSS not be available to a settling bank for any reason, the settling bank will be obligated to wire all such amounts to DTC prior to the designated cut-off time.<sup>8</sup>

A new item 4 in NSCC Procedure VIII sets forth the netting and payment obligations among common settling banks, NSCC, and DTC. For each common settling bank, DTC, as

settlement agent, will aggregate or net the net-net debit or net-net credit as applicable due by or due to such bank from or to NSCC and DTC. If the common settling bank owes a settlement debit to both clearing agencies, DTC will debit the FRB account the sum of the debit amounts. If the bank is owed a settlement credit from both, DTC will wire the bank the sum of the credit amounts.

Where the common settling bank owes a debit to one clearing agency and is owed a credit from the other, the common settling bank will be obligated to pay the net amount of that sum (if a net debit) or be entitled to receive the net amount (if a net credit). The clearing agency which prenet owes the settlement credit to the common settling bank will pay the net credit difference to the other clearing agency if the other clearing agency has a prenet debit.<sup>9</sup> NSCC will implement its failure to settle procedures if any common settling bank that had a net-net debit to NSCC before aggregation or netting of such amounts with the common settling bank's DTC settlement balance fails to pay its aggregate NSCC/DTC net debit amount, referred to as the "consolidated settlement debit amount," in full by the time specified in NSCC and DTC's procedures.

NSCC and DTC believe that the proposed rule changes are consistent with the requirements of section 17A of the Act<sup>10</sup> and the rules and regulations thereunder applicable to NSCC and DTC because they are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agencies or for which they are responsible by reducing the risk that the completion of settlement will be delayed because a settling bank is late or is unable to wire funds to DTC or NSCC in settlement of its obligations.

#### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

NSCC and DTC do not believe that the proposed rule changes will have an impact on or impose a burden on competition.

#### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others*

NSCC and DTC have discussed this proposal with various participants and industry groups, a number of whom

have worked closely with NSCC and DTC in developing the proposed consolidated settlement system. NSCC and DTC will notify the Commission of any written comments received.

### **III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

### **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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File Nos. SR-NSCC-2003-19 and SR-DTC-2003-11. These file numbers should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of NSCC and DTC.

All submissions should refer to File Nos. SR-NSCC-2003-19 and SR-DTC-2003-11 and should be submitted by November 3, 2003.

<sup>7</sup> Settling banks electing not to acknowledge their settlement balance will be required to sign an Acknowledgement Option Form. A common settling bank may not elect to opt out of acknowledging its balances unless it settles solely for its own account at both DTC and NSCC in which case that election will cover both the bank's NSCC and DTC net settlement balances.

<sup>8</sup> If a settling bank is experiencing extenuating circumstances and as a result needs to opt out of NSS for one business day and send its wire directly to DTC's FRBNY account for its debit balance, that settling bank must notify NSCC/DTC prior to acknowledging its settlement balance.

<sup>9</sup> For example, if NSCC owes the common settling bank \$5 million, and DTC is owed \$2 million by the common settling bank, NSCC will pay DTC \$3 million dollars which DTC will pay to the common settling bank using NSS.

<sup>10</sup> 15 U.S.C. 78q-1.