



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

December 1, 2016

Ms. Nikki Poulos
Managing Director and
Deputy General Counsel
National Securities Clearing Corporation
55 Water Street
New York, NY 10041

Re: Investment of Funds in NSCC's Long Free Account

Dear Ms. Poulos:

In your letter dated November 30, 2016,¹ on behalf of National Securities Clearing Corporation ("NSCC"), you request assurances that the staff of the Division of Trading and Markets ("Division") of the Securities and Exchange Commission ("Commission") would not recommend enforcement action to the Commission against a broker-dealer member of NSCC, under Rule 15c3-3 of the Securities Exchange Act of 1934 ("Exchange Act"),² if NSCC invests cash that is debited from its members' settlement accounts and credited to NSCC's long free account (also referred to as the fully-paid-for account, the "Long Free Account") in the allowable investments for fully-paid-for account funds as set forth in the Clearing Agency Investment Policy, which was filed with the Commission, pursuant to section 19(b)(1) of the Exchange Act and Rule 19b-thereunder, on August 25, 2016.³

I understand the facts to be as follows. NSCC maintains the Long Free Account to facilitate its members' securities delivery obligations. If a member with a long position and/or a position due for settlement on the next settlement day, in anticipation of receiving securities from NSCC as a result of the allocation process, instructs that securities within its possession or control be delivered on the next day and is subsequently not allocated the securities, the member may instruct NSCC to transfer the position that has not been allocated to the long free account. As part of this process, NSCC will then debit cash in a member's settlement account in an amount equal to the value of a position and credit the cash to NSCC's Long Free Account. The

¹ The defined terms in this letter have the same meanings as in your letter, unless otherwise noted.

² 17 CFR 240.15c3-3.

³ See Exchange Act Release No. 78778 (September 7, 2016), 81 FR 62963 (September 13, 2016) (SR-NSCC-2016-003). The defined terms in this letter have the same meanings as in your letter, unless otherwise noted.

cash NSCC credits to the long free account is reflected on NSCC's balance sheet as a current asset and as a liability (payable to the member). The Division has previously taken a no-action position with respect to the Long Free Account and the investment by NSCC of cash debited from members' settlement accounts and credited to NSCC's Long Free Account.⁴

On August 25, 2016, NSCC filed proposed rule change SR-NSCC-2016-003 with the Commission to adopt the Clearing Agency Investment Policy, which, among other things, specifies the allowable investments with respect to cash that is credited to NSCC's Long Free Account.⁵

Response:

Based on the facts and representations set forth in your letter, and without necessarily agreeing with your conclusions and analysis, the Division will not recommend enforcement action to the Commission against a broker-dealer member of NSCC, pursuant to Exchange Act Rule 15c3-3, if NSCC invests the cash debited from members' settlement accounts and credited to NSCC's Long Free Account in the allowable investments for fully-paid-for account funds as set forth in the Clearing Agency Investment Policy, which was filed with the Commission pursuant to section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder, on August 25, 2016 (SR-NSCC-2016-003).⁶

This staff position is based strictly on the facts and circumstances discussed in your letter, and any different facts and circumstances may require a different response. This response, furthermore, expresses the Division's position regarding enforcement action only and does not purport to express any legal conclusions on the question presented. The staff expresses no view with respect to any other questions that the activities discussed above may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules. This position is subject to modification or revocation as necessary or appropriate for the public interest or the protection of investors.

⁴ See Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to Robert J. Woldow, Senior Vice President and General Counsel, NSCC (May 10, 1984); *see also* Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to Karen L. Saperstein, Vice President, NSCC (April 19, 1991). The Division of Trading and Markets was formerly known as the Division of Market Regulation.

⁵ The Commission must approve any changes to the Clearing Agency Investment Policy pursuant to section 19(b)(2) of the Exchange Act. 15 U.S.C. 78s(b)(2).

⁶ *See supra* note 3. This letter and the no-action position it takes cannot be relied upon if the provision of the Clearing Agency Investment Policy specifying how cash credited to NSCC's long free account may be invested is subsequently amended pursuant to Section 19(b)(1) of the Exchange Act. In the event NSCC seeks to amend the Clearing Agency Investment Policy, it would need to determine if it would need to request a new no-action position from the Division.

Ms. Nikki Poulos
December 1, 2016
Page 3 of 3

If you have any questions regarding this letter, please contact Sheila Dombal Swartz,
Senior Special Counsel, at (202) 551-5545 or me at (202) 551-5525.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Macchiaroli", with a long horizontal flourish extending to the right.

Michael A. Macchiaroli
Associate Director

cc: Thomas K. McGowan,
Associate Director



Securing Today. Shaping Tomorrow.®

NIKKI POULOS
*Managing Director and
 Deputy General Counsel*

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 Corporation
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 npoulos@dtcc.com

November 30, 2016

Mr. Michael A. Macchiaroli
 Associate Director
 Division of Trading and Markets
 Securities and Exchange Commission
 100 F. Street, N.E.
 Washington, DC 20549

Re: Investment of Funds in NSCC's Long Free Account

Dear Mr. Macchiaroli:

National Securities Clearing Corporation ("NSCC") respectfully requests assurances that the staff of the Division of Trading and Markets ("Division") of the Securities and Exchange Commission ("Commission") would not recommend enforcement action to the Commission against a broker-dealer member of NSCC, under Rule 15c3-3 of the Securities Exchange Act of 1934 ("Exchange Act"), if NSCC invests cash debited from its members' settlement accounts and credited to NSCC's long free account (also referred to as the fully-paid-for account, the "Long Free Account") in the allowable investments for fully-paid-for account funds as set forth in NSCC's Clearing Agency Investment Policy, which was filed with the Commission, pursuant to section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder, on August 25, 2016.¹

NSCC maintains the Long Free Account to facilitate its members' securities delivery obligations while maintaining compliance with possession and control requirements pursuant to Rule 15c3-3 of the Exchange Act.² If a member with a long position and/or a position due for settlement on the next settlement day, in anticipation of receiving securities from NSCC as a result of the allocation process, instructs that securities within its possession or control be delivered on the next day and is subsequently not allocated the securities, the member may instruct NSCC to transfer the position which has not been allocated to the Long Free Account. As part of this process, NSCC may debit cash in a member's settlement account in an amount equal to the value of a position and credit the cash to NSCC's Long Free Account. The cash NSCC credits to the Long Free Account is reflected on NSCC's balance sheet as a current asset and as a liability (payable to the member).

NSCC guarantees the Long Free Account and marks it daily. All funds that NSCC receives from debiting the member's settlement account for the value of a position moved into the Long Free Account and all marks credited to the Long Free Account as a result of marking positions to the market daily, are segregated by NSCC from all other funds received by NSCC.³

¹ See Exchange Act Release No. 78778 (September 7, 2016), 81 FR 62963 (September 13, 2016) (SR-NSCC-2016-003).

² 17 CFR 240.15c3-3.

³ See Procedure VII - CNS Accounting Operation of NSCC's Rules and Procedures.

By letters dated May 10, 1984 and April 19, 1991, the Division granted no-action relief with respect to the Long Free Account and the investment by NSCC of cash debited from members' settlement accounts and credited to NSCC's Long Free Account.⁴ On August 25, 2016, NSCC filed a proposed rule change with the Commission, pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder, to adopt the Clearing Agency Investment Policy, which, among other things, specifies the allowable investments with respect to cash that is credited to NSCC's Long Free Account.⁵

In connection with this request, (i) NSCC confirms that the purpose and structure of the Long Free Account as described in the 1984 Letter and the 1991 Letter (other than the long free account for the Stock Borrow Program, which has been discontinued⁶) remain true and correct and (ii) NSCC reconfirms the following representations, which are substantially the same as the representations NSCC made in connection with the 1984 Letter and the 1991 Letter, except as noted below:

1. NSCC will place no lien on positions held in the Long Free Account;
2. NSCC will unconditionally guarantee delivery of the securities due to the member;
3. moneys in the Long Free Account will be invested in allowable investments for fully-paid-for account funds pursuant to the Clearing Agency Investment Policy;
4. all such allowable investments will be held for the exclusive benefit of members in the NSCC Long Free Account and NSCC will obtain from each institution at which such investments are held (other than The Federal Reserve Bank of New York) an agreement along the lines provided in Rule 15c3-3(f);
5. interest earned on the segregated Long Free Account will accrue to NSCC;⁷ and
6. NSCC members may submit a priority request so that securities in the Long Free Account will take high priority in NSCC's allocation routine.⁸

* * * *

⁴ See Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to Robert J. Woldow, Senior Vice President and General Counsel, NSCC (May 10, 1984) (the "1984 Letter"); see also Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to Karen L. Saperstein, Vice President, NSCC (April 19, 1991) (the "1991 Letter"). The Division of Trading and Markets was formerly known as the Division of Market Regulation.

⁵ See *supra* note 1.

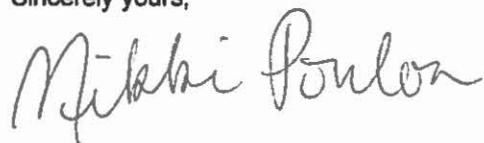
⁶ See Exchange Act Release No. 71156 (December 20, 2013), 78 FR 79028 (December 27, 2013) (SR-NSCC-2013-13).

⁷ NSCC is updating this representation to clarify that interest earned on the segregated Long Free Account accrues directly to NSCC and, as such, benefits NSCC members indirectly.

⁸ NSCC is updating this representation to clarify that NSCC members control the allocation priority of long positions other than those specifically identified within NSCC's Procedure VII Section E(4) through a priority request. Note that long positions related to NSCC's ID Net service and long positions against component securities of index receipts were added to Procedure VII Section E(4) after the date of the 1991 Letter. See Exchange Act Release No. 57573 (March 27, 2008), 73 FR 18019 (April 2, 2008) (SR-DTC-2007-14 and SR-NSCC-2007-14); and Exchange Act Release No. 57901 (June 2, 2008), 73 FR 32373 (June 6, 2008) (SR-DTC-2007-14 and SR-NSCC-2007-14).

We appreciate your assistance with this matter. If you have any questions or need additional information regarding this request, please contact me directly at npoulos@dtcc.com.

Sincerely yours,

A handwritten signature in black ink that reads "Nikki Poulos". The signature is written in a cursive, flowing style.

Nikki Poulos

Managing Director and Deputy General Counsel