SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99303; File No. SR-NSCC-2023-011)

January 9, 2024

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change to Refine the Margin Liquidity Adjustment ("MLA") Charge Calculation and the Description of the MLA Charge

I. INTRODUCTION

On November 17, 2023, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] proposed rule change SR-NSCC-2023-011 ("Proposed Rule Change") to modify NSCC's Rules & Procedures ("Rules")[3] to refine the Margin Liquidity Adjustment ("MLA") charge calculation and the description of the MLA Charge, as described in greater detail below. The Proposed Rule Change was published for public comment in the Federal Register on December 1, 2023.[4] The Commission has received no comments on the Proposed Rule Change. For the reasons discussed below, the Commission is approving the Proposed Rule Change.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Terms not defined herein are defined in the NSCC Rules, as applicable, available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.

4 See Securities Exchange Act Release No. 99022 (Nov. 27, 2023), 88 FR 83993 (Dec. 1, 2023) (File No. SR- NSCC-2023-011) ("Notice of Filing").

II. BACKGROUND

A. Overview of NSCC's Margin Methodology

NSCC provides central counterparty ("CCP") services, including clearing, settlement, risk management, and a guarantee of completion for virtually all broker-to-broker trades involving equity securities, corporate and municipal debt securities, and certain other securities. As a CCP, NSCC interposes itself as the buyer to every seller and seller to every buyer for the financial transactions it clears. As such, NSCC is exposed to the risk that one or more of its members may fail to make a payment or to deliver securities.

A key tool that NSCC uses to manage its credit exposure to its members is determining and collecting an appropriate Required Fund Deposit (i.e., margin) for each member.[5] The objective of a Member's margin is to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event NSCC ceases to act for that Member (hereinafter referred to as a "default").[6] The aggregated amount of all members' margin constitutes the NSCC Clearing Fund. NSCC would access its Clearing Fund should a defaulting Member's own margin be insufficient to satisfy losses to NSCC caused by the liquidation of that Member's portfolio.[7] Each member's margin consists of

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[5] See Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the Rules, supra note 3.

[6] The Rules identify when NSCC may cease to act for a Member and the types of actions NSCC may take. For example, NSCC may suspend a firm's membership with NSCC or prohibit or limit a Member's access to NSCC's services in the event that Member defaults on a financial or other obligation to NSCC. See Rule 46 (Restrictions on Access to Services) of the Rules, supra note 3.

[7] See Rule 4 (Clearing Fund), supra note 3.

several components, each of which is designed to address specific risks faced by NSCC arising out of its members' trading activity.

B. NSCC's MLA Charge

The MLA Charge[8] is a margin component designed to address the market impact costs of liquidating a defaulted Member's portfolio that may increase when that portfolio includes large Net Unsettled Positions in a particular group of securities with a similar risk profile or in a particular asset type (referred to as "asset groups"), thereby causing those costs to be higher than the amount collected for the Member's volatility charge.[9] A portfolio with large Net Unsettled Positions in a particular group of securities with a similar risk profile or in a particular asset type may be more difficult to liquidate in the market in the event the Member defaults because a concentration in that group of securities or in an asset type could reduce the marketability of those large positions. Therefore, such portfolios create a risk that NSCC may face increased market impact cost to liquidate that portfolio in the assumed margin period of risk of three business days at market prices.

The MLA Charge is calculated to address this increased market impact cost by determining an amount of margin to mitigate this risk. The MLA Charge is calculated for different asset groups. Essentially, the calculation is designed to compare the total

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8 See Securities Exchange Act Release Nos. 90181 (Oct. 14, 2020), 85 FR 66646 (Oct. 20, 2020) (File No. SR-NSCC-2020-016) and 90034 (Sep. 28, 2020), 85 FR 62342 (Oct. 2, 2020) (File No. SR-NSCC-2020-804) (introduced the MLA Charge).

9 The volatility charge is designed to capture the market price risk associated with liquidating each Member's portfolio at a 99th percentile level of confidence. See Notice of Filing, supra note 4, at 83994.

market value of a Net Unsettled Position in a particular asset group, which NSCC would be required to liquidate in the event of a Member default, to the available trading volume of that asset group or equities subgroup in the market.[10]

Specifically, when calculating the MLA Charge, NSCC currently categorizes securities into separate asset groups that have similar risk profiles – (1) equities[11] (excluding equities defined as Illiquid Securities pursuant to the Rules),[12] (2) Illiquid Securities, (3) unit investment trusts, or UITs, (4) municipal bonds (including municipal bond ETPs), and (5) corporate bonds (including corporate bond ETPs).[13] NSCC then further segments the equities asset group into the following subgroups: (i) micro-capitalization equities, (ii) small capitalization equities, (iii) medium capitalization equities, (iv) large capitalization equities, (v) treasury ETPs, and (vi) all other ETPs.[14]

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10 See id.

11 NSCC excludes long positions in Family-Issued Securities, as defined in Rule 1 (Definitions) of the Rules, from the MLA Charge. NSCC believes the margin charge applicable to long Net Unsettled Positions in Family-Issued Securities pursuant to Sections I(A)(1)(a)(iv) and (2)(a)(iv) of Procedure XV of the Rules provides adequate mitigation of the risks presented by those Net Unsettled Positions, such that an MLA Charge would not be triggered. See id. at n.14. See also supra note 3.

12 See Rule 1 (Definitions), supra note 3.

13 See Sections I(A)(1)(g) and I(A)(2)(f) of Procedure XV of the Rules, supra note 3. Additional details regarding the calculation of the MLA Charge are set forth in the NSCC's Methodology Documentation for Quantitative Margin Risk Models ("Methodology Documentation"). NSCC would revise the Methodology Documentation to incorporate the changes in the Proposed Rule Change and included copies of changes to the Methodology Documentation in Exhibit 3b to the Proposed Rule Change. Pursuant to 17 CFR 240.24b-2, NSCC requested confidential treatment of Exhibit 3b.

14 Id. The market capitalization categorizations currently are as follows: (i) micro-capitalization equities have a capitalization of less than $300 million, (ii) small

NSCC then calculates a measurement of market impact cost for each asset group and equities asset subgroup for which a Member has Net Unsettled Positions in its portfolio.[15]

III. DESCRIPTION OF THE PROPOSED RULE CHANGE

NSCC proposes to refine the MLA Charge calculation to more accurately calculate the impact costs of liquidating a security/portfolio by (i) moving all exchange traded products ("ETPs") (other than those deemed to be Illiquid Securities) into the equities asset group and calculating impact cost at the security level rather than at the subgroup level for the equities asset subgroups, and (ii) improving the calculations relating to exchange traded funds ("ETFs") by adding a calculation for latent liquidity for equity ETFs with in-kind baskets. In addition, NSCC proposes to amend the description of the MLA Charge to clarify the description of the calculation with respect to SFT Positions in connection with Securities Financing Transactions.

A. Moving Liquid ETPs into Equities Asset Group and Providing Security Level Market Impact Cost Calculations

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capitalization equities have a capitalization of equal to or greater than $300 million and less than $2 billion, (iii) medium capitalization equities have a capitalization of equal to or greater than $2 billion and less than $10 billion, and (iv) large capitalization equities have a capitalization of equal to or greater than $10 billion. NSCC reviews these categories annually, and any changes that NSCC deems appropriate are subject to NSCC's model risk management governance procedures set forth in the Clearing Agency Model Risk Management Framework ("Model Risk Management Framework"). See Securities Exchange Act Release Nos. 81485 (Aug. 25, 2017), 82 FR 41433 (Aug. 31, 2017) (File No. SR-NSCC-2017-008); 84458 (Oct. 19, 2018), 83 FR 53925 (Oct. 25, 2018) (File No. SR-NSCC-2018-009); 88911 (May 20, 2020), 85 FR 31828 (May 27, 2020) (File No. SR-NSCC-2020-008); 92381 (July 13, 2021), 86 FR 38163 (July 19, 2021) (SR-NSCC-2021-008); and 94272 (Feb. 17, 2022), 87 FR 10419 (Feb., 24 2022) (SR-NSCC-2022-001).

15 See Sections I(A)(1)(g) and I(A)(2)(f) of Procedure XV of the Rules, supra note 3.

NSCC proposes to move all ETPs, including corporate bond ETPs and municipal bond ETPs, other than ETPs that are deemed to be Illiquid Securities, into the equities asset group. Currently, corporate bond ETPs and municipal bond ETPs are included as corporate bonds and municipal bonds, respectively, for purposes of the MLA Charge calculation. ETPs are traded on an exchange giving them equity-like properties, such as trading volume data at the security level apart from their underlying assets which may not be actively traded. Therefore, the impact costs of liquidating ETPs can be estimated in the same manner as other items in the equities asset subgroups, at the security level, as discussed below. ETPs that are deemed to be Illiquid Securities would be included in the Illiquid Securities category.[16]

NSCC also proposes to revise the market impact cost calculation for the equities asset group and subgroups to calculate the impact cost at the security level. Based on a review of its margin methodologies (and the ETF Study discussed below), NSCC has determined that equities and liquid ETPs display a wide disparity of trading volumes (as measured by average daily volumes) even within subgroups, and the market impact costs are more dependent on specific securities than the subgroup.[17] As a result, NSCC is proposing to calculate the market impact costs for securities in the equities asset group, including liquid ETPs, at the security level rather than at the subgroup level, which

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[16] See definition of "Illiquid Security" in Rule 1, supra note 3. For instance, if an ETP is not listed on a specified securities exchange or has a limited trading history, as defined in the definition, it would be treated as an Illiquid Security for purposes of the MLA Charge calculations.

[17] See Notice of Filing, supra note 4, at 83996.

NSCC states has shown to be a more accurate calculation of market impact costs for these securities.[18]

Currently, the MLA Charge calculation for the equity asset subgroups includes a measurement of the concentration of the Net Unsettled Position in the subgroup.[19] Since the market impact cost would be calculated at the security level for the equities asset group, rather than the subgroup level, this measurement would no longer be necessary and would be removed.

In addition, for each asset group or subgroup, NSCC currently compares the calculated market impact cost to a portion of the volatility charge that is allocated to Net Unsettled Positions in that asset group or subgroup and compares that ratio to a threshold to determine if an MLA Charge is applicable to that asset group or subgroup.[20] Since the market impact cost would be calculated at the security level for all assets in the equity asset group, rather than the subgroup level, this comparison would be at the asset group level for all asset groups, including the equities asset group, and would no longer be made at the subgroup level for subgroups within the equities asset group.

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[18] Id.

[19] See id. at 83995.

[20] Supra note 3. NSCC's margining methodology uses a three-day assumed period of risk. For purposes of this calculation, NSCC uses a portion of the applicable volatility charge that is based on one-day assumed period of risk and calculated by applying a simple square-root of time scaling, referred to in this proposed rule change as "1-day volatility charge." Any changes that NSCC deems appropriate to this assumed period of risk would be subject to NSCC's model risk management governance procedures set forth in the Model Risk Management Framework. See supra note 14. See also Sections I(A)(1)(g) and I(A)(2)(f) of Procedure XV of the Rules, supra note 3.

To reflect these changes in the Rules, NSCC would amend Sections I(A)(1)(g) and I(A)(2)(f) of Procedure XV of the Rules[21] to move all ETP categories as subgroups in the equities asset group other than ETPs that are deemed to be Illiquid Securities, which would be categorized as Illiquid Securities. A footnote in each of these sections would be added to the "all other ETPs" category to clarify that ETPs with underlying securities separately categorized in an equities asset subgroup would be categorized by the asset types and capitalizations of their underlying securities, and that ETPs that are deemed Illiquid Securities would be categorized in the Illiquid Securities asset group.

Sections I(A)(1)(g) and I(A)(2)(f) of Procedure XV would be restructured to reflect that the market impact calculation for securities in the equities asset group would be calculated at the security level rather than the subgroup level, as discussed above. As a result of this change, the current component that measures the concentration of each Net Unsettled Position in a subgroup would be removed from Sections I(A)(1)(g)(i)(4) and I(A)(2)(f)(i)(4) of Procedure XV. References to subgroup calculations would also be removed in applicable provisions, including the provisions relating to comparing the calculated market impact cost at the subgroup level to the volatility charge applicable to the Net Unsettled Positions and an applicable MLA Charge at the subgroup level and a sentence that states that all MLA Charges for each of the equities subgroups shall be added together to result in one MLA Charge for the equities subgroup. In addition, references to subgroups with respect to calculations relating to asset groups other than the equities asset group currently in Sections I(A)(1)(g)(ii) and I(A)(2)(f)(ii) (i.e., references

[21] See Sections I(A)(1)(g) and I(A)(2)(f) of Procedure XV of the Rules, supra note 3.

to the treasury ETP and other ETP subgroups) would be removed since those would be calculated as part of the equities asset group, as discussed above.

NSCC would add language to clarify that for each Member, all MLA Charges for each of the asset groups shall be added together to result in a total MLA Charge.

B. Changes to ETF Calculations

NSCC proposes to amend the impact cost calculations for ETFs to more accurately account for the market impact of these securities and in response to regulatory feedback on NSCC's margin methodologies, by incorporating "latent" liquidity to more accurately reflect the market liquidity of ETFs.[22] ETFs are securities that are traded on an exchange and that track underlying securities, indexes or other financial instruments, including equities, corporate and municipal bonds and treasury instruments. Unlike mutual funds, ETFs are created with the assistance of certain financial institutions called authorized participants ("APs"), often banks, that are given the ability to create and redeem ETF shares directly from the ETF issuer. To create ETF shares, an AP can either deliver a pre-specified bundle of securities underlying the ETFs (i.e., an "in-kind basket") in exchange for ETF shares, or provide cash equal to the value of the cost of purchasing underlying securities for the ETF shares. To redeem ETF shares, an AP would do the opposite – deliver ETF shares to the ETF issuer in exchange for an in-kind basket of underlying securities or cash equal to the value of the underlying securities.

Throughout the life of an ETF, APs create and redeem shares depending on the market and arbitrage opportunities. As a result, ETFs, particularly those with in-kind creation/redemption mechanisms, tend to trade close to the value of the underlying

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22 See Notice of Filing, supra note 4, at 83996.

securities. For instance, if the market price of the ETF on the secondary market (discussed below) is above the value of the securities underlying the ETF, the AP can purchase underlying securities (at the lower price) and exchange those securities to create new ETFs. Likewise, if the market price of the ETF falls below the value of the securities underlying the ETFs, an AP can buy ETF shares on the secondary market and redeem them with the ETF issuer in exchange for the underlying securities.

As a result of this structure, ETF market liquidity can be divided into two markets: the primary market and the secondary market. The primary market consists of APs creating and redeeming ETF shares directly with the ETF issuer. The secondary market consists of investors buying and selling ETFs through exchanges. Often the stocks underlying an ETF basket have much larger trading volumes than the trading volume of the ETF itself. Upon the liquidation of a portfolio with ETFs, the ability of APs to create and redeem ETF shares provides additional liquidity, also called "latent liquidity," which changes the market risk profile of ETFs with in-kind basket creation/redemption processes.

The current impact cost calculation for the MLA Charge does not include calculations measuring the impact relating to latent liquidity. NSCC recently commissioned a review of ETFs ("ETF Study") that included an ETF market review, risk characteristics, and an independent simulation of market impact costs associated with sample clearing portfolios.[23] Based on the ETF Study, it was observed that most equity ETFs with an in-kind creation/redemption process trade with very tight premium/discount

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[23] NSCC included the ETF Study in Exhibit 3c to the Proposed Rule Change. Pursuant to 17 CFR 240.24b-2, NSCC requested confidential treatment of Exhibit 3c.

to net asset value ("NAV"), or close to the value of the underlying securities.[24] Often, however, the stocks underlying the equity ETF baskets have a much larger trading volume than the equity ETF itself, which creates latent liquidity.

As a result, NSCC is proposing to include, as part of its impact calculation, a measure of the latent liquidity for equity ETFs with in-kind basket creation/redemption processes and a measure of the costs associated with primary market activity to more accurately assess the impact costs relating to liquidating portfolios containing equity ETFs. The proposed calculation would take into account liquidity in the primary and secondary market for liquid equity ETFs with in-kind creation/redemption processes, by comparing the market impact cost of such equity ETFs based on a hypothetical liquidation in the primary market and in the secondary market.

To determine the impact costs of a liquidation of equity ETFs with in-kind baskets, NSCC would run the proposed MLA Charge calculations described above in two scenarios for portfolios that contain such ETFs and compare the two calculations to determine the impact cost. NSCC would run a baseline calculation ("Baseline Calculation") to simulate all the ETF positions being liquidated in the secondary market and the impact cost calculation would be at the security level (i.e., the ETF shares) as liquid equities (as discussed above). NSCC would also run an alternative calculation ("Create/Redeem Calculation") to simulate the ETF positions being liquidated in the primary market using the creation/redemption process.

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[24] Id. When an ETF's market price is higher than its NAV, it's trading at a premium, when it's lower, it's trading at a discount. The spread between the premium or discount to the NAV represents a potential cost to close out the paired ETF and its in-kind basket.

The Create/Redeem Calculation would be calculated as follows:

- First, the liquid equity ETFs eligible for in-kind create/redeem process would be fully decomposed into (a) the corresponding underlying baskets of the liquid equity ETFs and (b) pairs of such ETFs and their corresponding underlying baskets;
- Second, the decomposed underlying baskets and the residual securities in the portfolio (i.e., the securities in the original portfolio that are not ETFs eligible for in-kind create/redeem process) would be netted at the security level;
- Third, the impact cost on the portfolio from the second step would be calculated assuming all the securities would be liquidated in the secondary market, and the impact costs would be calculated as described above as if such securities are liquid equities;
- Fourth, the impact cost calculated in the third step would be adjusted by an amount to account for the portfolio risk difference[25] from the netted securities resulting from the second step, as compared to the original portfolio;

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25 The original portfolio used in the Baseline Calculation and the decomposed portfolio from step two would have different portfolio risks. As a result, because such portfolios would contain different positions, they would have different VaR Charges if calculated separately. The VaR Charge of the original portfolio is a component of the MLA Charge calculation for the portfolio from step two. Step four would adjust for those differences as part of the impact cost.

- Fifth, the impact cost for paired ETFs and their corresponding underlying baskets would be calculated by multiplying the gross market amount of the ETFs by a haircut representing the premium/discount;[26] and
- Lastly, the impact costs from step four and step five would be added together.

NSCC would then use the smaller calculated impact costs of either the Baseline Calculation or the Create/Redeem Calculation for purposes of calculating the MLA Charge.

To reflect these changes in the Rules, NSCC would add language in Sections I(A)(1)(g) and I(A)(2)(f) of Procedure XV stating that the impact cost for ETFs with in-kind baskets would include calculations comparing impact costs in the secondary market and the primary market for such equity ETFs, as discussed above. NSCC would indicate that it would calculate impact costs in two scenarios: (1) a baseline calculation to simulate such ETFs being liquidated in the secondary market where the impact costs would be calculated at the security level (i.e., the ETF shares) utilizing the equities asset subgroup security level and (2) a create/redeem calculation to simulate an authorized participant using the primary market to liquidate such ETFs using the creation/redemption process. The proposed language would include a description of the how the impact costs for the create/redeem calculation would be calculated by

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26 The haircut is calculated as an estimate of the cost of closing out the ETFs and underlying pairs using the create/redeem process. The haircut is a model parameter and will be reviewed at least monthly in accordance with the model risk management governance procedures set forth in the model Risk Management Framework. See supra note 14.

decomposing the ETFs into their underlying securities and calculating impact costs of such underlying securities utilizing the equity asset subgroup calculations (as discussed above). The proposed language would also state that an adjustment would be made in the create/redeem calculation to reflect the different portfolio risks of the original portfolio used in the baseline calculation and the decomposed portfolio used in the create/redeem calculation. The proposed language would provide that NSCC would then use the smaller calculated impact costs of the scenarios for purposes of the MLA Charge for such ETFs.

C. Changes Concerning SFT Positions

Rule 56 describes the SFT Clearing Service and contains a description of how the Clearing Fund formula is calculated with respect to SFT Positions, including how such positions are calculated with respect to the MLA Charge.[27] The Proposed Rule Change would update the language in Rule 56 relating to the MLA Charge to clarify how NSCC would calculate the MLA Charge with respect to SFT Positions for transparency and to reflect the proposed MLA Charge refinements, but it would not change how NSCC would calculate the MLA Charge with respect to SFT positions. NSCC would clarify how SFT Positions would be categorized for purposes of the MLA Charge by replacing language stating that SFT Positions are "aggregated with" Net Unsettled Positions in the same asset group or subgroup with language that clarifies that SFT Positions would be categorized in the same asset groups or subgroups as the underlying SFT Securities in such SFT Positions. NSCC would also clarify language discussing an added calculation

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27 See Rule 56 (Securities Financing Transaction Clearing Service) of the Rules, supra note 3.

relating to the MLA Charge in the event a Member's portfolio contains both (i) SFT Positions and (ii) Net Unsettled Positions or Net Balance Order Unsettled Positions. The language in Rule 56 relating to the added calculation for SFT positions does not reference Net Balance Order Unsettled Positions which are treated in the same manner as Net Unsettled Positions for purposes of the added calculation when a portfolio contains both (i) SFT Positions and (ii) Net Unsettled Positions or Net Balance Order Unsettled Positions. The proposed language would add a reference to Net Balance Order Unsettled Positions.

NSCC is also proposing to add a sentence in Sections I(A)(1)(g) and I(A)(2)(f) of Procedure XV of the Rules clarifying that if a Member's portfolio contains both (i) SFT Positions and (ii) Net Unsettled Positions or Net Balance Order Unsettled Positions, the MLA Charge shall be calculated as set forth in Rule 56.

IV. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Act[28] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After carefully considering the proposed rule change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC. In particular, the

[28] 15 U.S.C. 78s(b)(2)(C).

Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F)[29] of the Act and Rules 17Ad-22(e)(4)(i), and (e)(6)(i) thereunder.[30]

A. Consistency with Section 17A(b)(3)(F) of the Act

1. Prompt and Accurate Clearance and Settlement

Section 17A(b)(3)(F) of the Act[31] requires that the rules of a clearing agency, such as NSCC, be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[32] The Commission believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act for the reasons stated below.

As described above in Sections III.A and B, NSCC proposes to refine the MLA Charge calculation to more accurately calculate the impact costs of liquidating a security/portfolio by moving all ETPs (except for Illiquid Securities) into the equities asset group and calculating impact cost at the security level rather than at the subgroup level for the equities asset subgroups, and by adding a calculation for latent liquidity for equity ETFs. As a result, the proposal would better align the MLA Charge with the risks arising from position concentrations in portfolios containing ETPs and ETFs. The Commission believes that a closer alignment between the MLA Charge and the risks presented by the concentration of securities Member portfolios would help facilitate

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[29] 15 U.S.C. 78q-1(b)(3)(F).

[30] 17 CFR 240.17Ad-22(e)(4)(i) and(e)(6)(i).

[31] 15 U.S.C. 78q-1(b)(3)(F).

[32] Id.

NSCC's ability to set margins that more accurately reflect the risks posed by such portfolios. Setting margins that accurately reflect the risks posed by its members' portfolios could reduce the likelihood that NSCC would not have collected sufficient margin to address losses arising out of a member default. Reducing the likelihood that NSCC holds insufficient margin to address default losses would, in turn, further assure that NSCC's operation of its critical clearance and settlement services would not be disrupted because of insufficient financial resources.

As part of the Proposed Rule Change, NSCC filed Exhibit 3a – Summary of Impact Study ("Impact Study"), which provided the actual MLA Charges at the member-level, account-level, and CCP-level, from January 3, 2022 through June 30, 2023, as compared to the MLA Charges that NSCC would have assessed if the proposed amendments had been in place during that time period.[33] The Commission reviewed and analyzed the Impact Study, which showed, among other things, that had the proposed amendments been in place during that period, it would have resulted in an average daily increase of $62 million in the aggregate MLA Charge. Therefore, the Commission believes that the Impact Study demonstrates that the proposed MLA Charge calculation would enable NSCC to set more precise margin coverage levels than those using the current calculation, providing further assurance that NSCC's operation of its critical clearance and settlement services would not be disrupted because of insufficient financial resources.

As described above in Section III.C, NSCC proposes to provide transparency to

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[33] NSCC has requested confidential treatment of Exhibit 3a, pursuant to 17 CFR 240.24b-2.

the Rules by updating the language relating to how the MLA Charge is calculated with respect to SFT Positions. Enhancing the clarity of the NSCC Rules would enable members to more efficiently and effectively understand and conduct their business in accordance with the NSCC Rules.

Accordingly, for the reasons above, the Commission finds that the Proposed Rule Change should help NSCC to continue providing prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[34]

2. Safeguarding Securities and Funds

In the event that a defaulted member's own margin be insufficient to satisfy losses to NSCC caused by the liquidation of that member's portfolio, NSCC would access the mutualized Clearing Fund. As discussed above in Section IV.A.1, NSCC's proposed enhancements to the MLA Charge calculation discussed in Sections III.A and B should help facilitate NSCC's ability to promptly respond to changing risk profiles of its members' portfolios, and thereby set margins that more accurately reflect the risks posed by such portfolios. As a result, the proposal would better align the MLA Charge with the risks arising from position concentrations in portfolios containing ETPs and ETFs should help ensure that NSCC collects sufficient margin from its members. Accordingly, the Proposed Rule Change should help minimize the likelihood that NSCC would have to access the Clearing Fund, thereby limiting non-defaulting members' exposure to mutualized losses.

The Commission believes that by helping to limit the exposure of NSCC's non-defaulting members to mutualized losses, the Proposed Rule Change would help NSCC

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[34] 15 U.S.C. 78q-1(b)(3)(F).

assure the safeguarding of securities and funds which are in its custody or control, consistent with Section 17A(b)(3)(F) of the Act.[35]

B. Consistency with Rule 17Ad-22(e)(4)(i) under the Act

Rule 17Ad-22(e)(4)(i) under the Act requires that each covered clearing agency that provides central counterparty services, such as NSCC, establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[36] The Commission believes that the proposal is consistent with Rule 17Ad-22(e)(4)(i) under the Act for the reasons stated below.

As discussed above in Section IV.A, NSCC's proposed enhancements to the MLA Charge calculation would apportion a higher MLA Charge to those members' accounts that present greater potential risk to NSCC due to large Net Unsettled Positions in a particular group of securities with a similar risk profile or asset types that may be more difficult to liquidate in the market in the event the member defaults. As a result, the proposal would better align the MLA Charge with the risks arising from position concentration in such portfolios. The Commission has reviewed and analyzed the filing materials, including the Impact Study,[37] and agrees that the proposed enhancements to the MLA Charge calculation should better enable NSCC to collect margin amounts that

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[35] Id.

[36] 17 CFR 240.17Ad-22(e)(4)(i).

[37] See supra note 33.

are sufficient to mitigate NSCC's credit exposures to its members' portfolios, as compared to the current methodology.

Accordingly, the Commission finds the Proposed Rule Change is consistent with Rule 17Ad-22(e)(4)(i) under the Act because it is designed to assist NSCC in managing its credit exposures to its members by maintaining sufficient financial resources to cover its credit exposure to the portfolios of members with ETP and equity ETF positions in their respective portfolios.[38]

C. Consistency with Rule 17Ad-22(e)(6)(i) under the Act

Rule 17Ad-22(e)(6)(i) under the Act requires that each covered clearing agency that provides central counterparty services, such as NSCC, establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[39] The Commission believes that the proposal is consistent with Rule 17Ad-22(e)(6)(i) under the Act for the reasons stated below.

As discussed above in Section IV.A, NSCC's proposed enhancements to the MLA Charge calculation would apportion a higher MLA Charge to those member accounts that present greater potential risk to NSCC due to large Net Unsettled Positions in a particular group of securities with a similar risk profile or asset types that may be more difficult to liquidate in the market in the event the member defaults. As a result, the

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[38] 17 CFR 240.17Ad-22(e)(4)(i).

[39] 17 CFR 240.17Ad-22(e)(6)(i).

proposal would better align the MLA Charge with the risks arising from position concentration in such member portfolios. The Commission has reviewed and analyzed the filing materials, including the Impact Study,[40] and agrees that the proposed enhancements to the MLA Charge calculation would enable NSCC to set margins that more accurately reflect the risks posed by such portfolios than the current methodology. As a result, implementing the Proposed Rule Change would better enable NSCC to set and collect margin at levels commensurate with the risks associated with the portfolios of its members.

Accordingly, the Commission finds the Proposed Rule Change is consistent with Rule 17Ad-22(e)(6)(i) under the Act because it is designed to assist NSCC in maintaining a risk-based margin system that considers, and produces margin levels commensurate with, the risks and particular attributes of members' portfolios.[41]

VII. CONCLUSION

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[42] and the rules and regulations promulgated thereunder.

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40 See supra note 33.

41 17 CFR 240.17Ad-22(e)(6)(i).

42 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act[43] that Proposed Rule Change SR-NSCC-2023-011, be, and hereby is, APPROVED.[44]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Sherry R. Haywood,

Assistant Secretary.

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43 15 U.S.C. 78s(b)(2).

44 In approving the Proposed Rule Change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

45 17 CFR 200.30-3(a)(12).