

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-99733; File Nos. SR-NSCC-2023-007)

March 14, 2024

Self-Regulatory Organizations; The National Securities Clearing Corporation; Order Granting Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1 and Amendment No. 2, to Modify the Amended and Restated Stock Options and Futures Settlement Agreement and Make Certain Revisions to the NSCC Rules

**I. INTRODUCTION**

On August 10, 2023, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-NSCC-2023-007 (“Proposed Rule Change”) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to change terms related to the physical settlement of equities arising out of certain futures and options contracts.<sup>3</sup> On August 30, 2023, the Proposed Rule Change was published for public comment in the *Federal Register*.<sup>4</sup>

On September 25, 2023, pursuant to Section 19(b)(2) of the Exchange Act,<sup>5</sup> the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.<sup>6</sup>

On November 8, 2023, NSCC filed Partial Amendment No. 1 to the Proposed Rule Change.<sup>7</sup> On November 14, 2023, the Commission published notice of Partial Amendment No.

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Notice of Filing *infra* note 4, at 88 FR 59968.

<sup>4</sup> Securities Exchange Act Release No. 98213 (Aug. 24, 2023), 88 FR 59968 (Aug. 30, 2023) (File No. SR-NSCC-2023-007) (“Notice of Filing”).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> Securities Exchange Act Release No. 98508 (Sep. 25, 2023), 88 FR 67407 (Sep. 29, 2023) (File No. SR-NSCC-2023-007).

<sup>7</sup> Partial Amendment No. 1 delays implementation of the proposed change. In Partial Amendment No. 1, NSCC proposes to implement the proposed rule change within 90 days of receiving all necessary regulatory

1 and instituted proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,<sup>8</sup> to determine whether to approve or disapprove the proposed rule change, as modified by the Partial Amendment No. 1.<sup>9</sup> On January 24, 2024, NSCC filed Amendment No. 2 to the Proposed Rule Change, which was published in the *Federal Register* for public comment on January 31, 2024.<sup>10</sup> The Commission has received public comment regarding the Proposed Rule Change.<sup>11</sup> On February 20, 2024, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change.<sup>12</sup>

This order approves the Proposed Rule Change as modified by Partial Amendment No. 1 and Amendment No. 2 (hereinafter defined as “Proposed Rule Change”).

## II. BACKGROUND

NSCC is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. The Options Clearing Corporation (“OCC”) is the sole clearing agency for standardized equity options listed on

---

approvals and would announce the specific date of implementation on its public website at least 14 days prior to implementation. The delay is proposed in light of the technical system changes that are required to implement the liquidity stress testing enhancements and to be able to provide sufficient notice to Clearing Members following receipt of approval.

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>9</sup> Securities Exchange Act Release No. 98930 (Nov. 14, 2023), 88 FR 80790 (Nov. 20, 2023) (File No. SR-NSCC-2023-007).

<sup>10</sup> Securities Exchange Act Release No. 99432 (Jan. 25, 2024), 89 FR 6140 (Jan. 31, 2024) (File No. SR-NSCC-2023-007) (“Notice of Amendment”). Amendment No. 2 adds a second phase of changes to the proposed rule change. The changes added in Phase 2 include improved information sharing between OCC and NSCC and are designed to facilitate the shortening of the standard settlement cycle for most broker-dealer transactions from T+2 to T+1. *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7-05-22).

<sup>11</sup> Comments on the Proposed Rule Change are available at <https://www.sec.gov/comments/sr-nssc-2023-007/srnssc2023007.htm>. The Commission received comments on the proposed rule change that express concerns unrelated to the substance of the filing. *See, e.g.*, comment from JT Clark (Oct. 10, 2024) (general concern about corruption in the markets) and comment from Anthony LaBree (Oct. 12, 2024) (concerns about OCC’s business practices).

<sup>12</sup> Securities Exchange Act Release No. 99567 (Feb. 20, 2024), 89 FR 14122 (Feb. 26, 2024) (File No. SR-NSCC-2023-007).

national securities exchanges registered with the Commission, including options that contemplate the physical delivery of equities cleared by NSCC in exchange for cash (“physically settled” options).<sup>13</sup> OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise and assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations to be cleared by NSCC (“Exercise and Assignment Activity” or “E&A Activity”). NSCC and OCC maintain a legal agreement, generally referred to by the parties as the “Accord,” that governs the processing of such E&A Activity for firms that are members of both OCC and NSCC (“Common Members”).

Under certain circumstances, the Accord currently allows NSCC not to guaranty the settlement of securities arising out of E&A Activity for a Common Member for whom NSCC has ceased to act (e.g., due to a default by that member). To the extent NSCC chooses not to guaranty such transactions of a defaulting Clearing Member, OCC would have to engage in an alternate method of settlement outside of NSCC to manage the default. This presents two issues. First, based on historical data, the cash required for such alternative settlement could be as much as \$300 billion.<sup>14</sup> Second, because NSCC’s netting process dramatically decreases the volume of securities settlement obligations that must be addressed, settlement of physically-settled options and futures outside of NSCC introduces significant operational complexities. Specifically, without NSCC’s netting process, OCC would have to coordinate a significantly increased

---

<sup>13</sup> The term “physically-settled” as used throughout the OCC Rulebook, refers to cleared contracts that settle into their underlying interest (i.e., options or futures contracts that are not cash-settled). The OCC By-Laws and OCC Rules are available at [www.theocc.com/company-information/documents-and-archives/by-laws-and-rules](http://www.theocc.com/company-information/documents-and-archives/by-laws-and-rules). When a contract settles into its underlying interest, shares of stock are sent (i.e., delivered) to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option and at the time of maturity in the case of a future.

<sup>14</sup> See Notice of Filing, 88 FR at 59969.

number of transactions on a broker-to-broker basis rather than through a single central counterparty, and the total value of settlement obligations that would need to be processed would be significantly higher.<sup>15</sup>

NSCC proposes to revise the Accord to address these liquidity and operational issues. In particular, OCC and NSCC have agreed to modify the Accord to require NSCC to accept E&A Activity from OCC (i.e., guaranty the positions of a defaulting Common Member), provided that OCC makes a payment to NSCC called the “Guaranty Substitution Payment,” or “GSP.” The GSP is designed to cover OCC’s share of the incremental risk to NSCC posed by the defaulting Common Member’s positions. The total risk posed to NSCC by a defaulting Common Member would be the sum of (i) the defaulter’s unpaid deposit to the NSCC Clearing Fund (“Required Fund Deposit”),<sup>16</sup> and (ii) the defaulter’s unpaid Supplemental Liquidity Deposit (“SLD”).<sup>17</sup> If OCC pays the GSP to NSCC, NSCC would be obligated under the amended Accord to accept that member’s E&A activity from OCC and conduct settlement through NSCC’s netting process and systems. NSCC would calculate how much of the defaulting Common Member’s Required Fund Deposit and SLD are attributable to the E&A Activity that OCC sends to NSCC, and that amount would be the GSP. Based on historical data, OCC’s GSP could be as much as \$6 billion,

---

<sup>15</sup> For example, in 2022 it is estimated that netting through NSCC’s continuous net settlement (“CNS”) accounting system reduced the value of CNS settlement obligations from \$519 trillion to \$9 trillion, an approximately 98 percent reduction. *See id.*

<sup>16</sup> The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules. *See* Notice of Filing, 88 FR at 59971, n.26.

<sup>17</sup> Under the NSCC Rules, in certain circumstances, NSCC collects the Supplemental Liquidity Deposit, which is an additional cash deposit from each of those Members who would generate the largest settlement debits in stressed market conditions. *See* Rule 4A of the NSCC Rules. *See also* Notice of Filing, 88 FR at 59971, n.27.

which is significantly less than the potential \$300 billion that could be required for alternative settlement outside of NSCC.<sup>18</sup>

As noted above, NSCC amended the Proposed Rule Change after filing. The primary purposes of the Amendment No. 2 were to provide for improved information sharing between OCC and NSCC, and ensure that the new process and timing for NSCC to calculate the GSP and OCC to pay the GSP will be consistent with relevant process and timing requirements necessitated by the industry transitions to a T+1 settlement cycle for securities.<sup>19</sup> NSCC has labeled the proposed changes included in the initial filing to allow OCC to pay the GSP to NSCC as Phase 1 of the proposed changes, and the additional changes in the amendment to enhance information sharing and facilitate the transition to T+1 as Phase 2.<sup>20</sup>

NSCC also proposes to make conforming changes to its Rules & Procedures (“NSCC Rules”) to facilitate the proposed changes to the Accord.<sup>21</sup>

#### **A. Information Sharing and the Guaranty Substitution Payment**

The proposed revisions to the Accord designed to introduce and facilitate the new GSP include the following: changes designed to facilitate improved information sharing between OCC and NSCC; changes that would define the calculation of the GSP; changes that would define the process and timing by which guaranty of the E&A Activity would transfer from OCC

---

<sup>18</sup> See Notice of Filing, 88 FR at 59969.

<sup>19</sup> On February 15, 2023, the Commission adopted rules to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1. See Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7-05-22).

<sup>20</sup> NSCC has proposed a two-step implementation based on the categorization of changes as part of Phase 1 and Phase 2. See Notice of Amendment, 89 FR at 6151.

<sup>21</sup> Capitalized terms not defined herein are defined in the NSCC Rules. The NSCC Rules are available at [www.dtcc.com/-/media/Files/Downloads/legal/rules/nsccl\\_rules.pdf](http://www.dtcc.com/-/media/Files/Downloads/legal/rules/nsccl_rules.pdf).

to NSCC;<sup>22</sup> and additional conforming changes to the Accord to support these and the other changes described in more detail below.

*Improved Information Sharing.* Currently, NSCC sends a file daily to OCC defining which securities are eligible to settle through NSCC. OCC then delivers to NSCC a file identifying securities to be physically settled at NSCC as a result of E&A Activity. This process would continue under the proposal, however, as part of Phase 1 NSCC would also communicate the GSP daily to OCC.<sup>23</sup> In Phase 2, NSCC would continue to communicate the GSP daily to OCC, but the calculation would differ, as described in more detail below.

Also in Phase 2, OCC and NSCC would share additional information beyond the daily exchange of position files and communication of the GSP. Specifically, NSCC would communicate to OCC daily the single largest GSP observed in the prior 12 months (the “Historical Peak GSP”), which would in turn provide a data point for discussion between OCC and NSCC to confirm that OCC will likely be in a position to commit to paying the actual GSP in the event of the default of a Common Member.<sup>24</sup> NSCC would also communicate a set of margin and liquidity-related data to OCC daily (the “GSP Monitoring Data”). The GSP Monitoring Data would be for informational purposes and would facilitate OCC’s daily

---

<sup>22</sup> Here, the “transfer” of the guaranty refers to the point at which OCC’s settlement guaranty with respect to E&A Activity ends and NSCC’s settlement guaranty begins.

<sup>23</sup> NSCC would communicate both the total amount of collateral required to cover the risk presented by each common clearing member and what percentage of that risk is attributable to OCC (i.e., the GSP) and therefore OCC would need to pay to require NSCC to guaranty the positions of a Common Member for whom NSCC has ceased to act.

<sup>24</sup> NSCC would provide the Historical Peak GSP to OCC daily, and OCC would communicate to NSCC whether OCC has Clearing Fund cash in excess of the Historical Peak GSP. If OCC does not have sufficient cash in the Clearing Fund, this would allow OCC and NSCC to escalate discussion of whether OCC will likely be in a position to commit to paying the actual GSP (e.g., what other resources OCC has, whether the actual GSP is likely to be as large as the historical peak). The comparison of OCC’s resources to the Historical Peak GSP would not affect whether OCC is permitted to send E&A Activity to NSCC.

assessment of its ability to commit to pay the actual GSP in the event of the default of a Common Member.

*The Guaranty Substitution Payment.* As described above, NSCC would communicate to OCC the GSP amount each day. In the event of a Common Member default, this is the amount OCC would need to pay to require NSCC to guaranty the positions of the defaulting Common Member. Under both Phases 1 and 2, the GSP for a given member would be the amount necessary to cover the risk posed by the member's E&A Activity, and would be calculated by determining the portion of the defaulting Clearing Member's Required Fund Deposit and SLD that the member owes to NSCC that is attributable to the member's E&A Activity at OCC. The calculation of OCC's portion of the Required Fund Deposit obligation would differ between Phases 1 and 2, with a precise calculation in Phase 2 replacing a proxy from Phase 1.

In Phase 1, NSCC would approximate the percentage of the member's Required Fund Deposit attributable to E&A Activity by referencing the day-over-day change in gross market value of the Common Member's positions at NSCC. NSCC acknowledges that this gross market value proxy methodology overestimates or underestimates the Required Fund Deposit attributable to a Common Member's E&A Activity, but states that current technology constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member.<sup>25</sup> The Phase 2 changes to the Accord would introduce a more precise allocation of the Required Fund Deposit portion of the GSP, which would help eliminate the potential over- or under-estimation of OCC's portion of the Required Fund Deposit.<sup>26</sup>

---

<sup>25</sup> See Notice of Amendment, 89 FR at 6144.

<sup>26</sup> See *id.* OCC and NSCC agreed that performing the necessary technology build during Phase 1 would delay the implementation of the proposal. NSCC will incorporate those technology updates in connection with Phase 2 of this proposal. *Id.*

Specifically, in Phase 2, NSCC would calculate OCC's portion of the Required Fund Deposit as a difference between the Required Fund Deposit of the Common Member's entire portfolio and the Required Fund Deposit of the Common Member's portfolio prior to the submission of E&A Activity. This more precise calculation would completely replace the Phase 1 gross market value proxy. Under both Phases 1 and 2, the SLD portion of the GSP would be the Common Member's unpaid SLD associated with any E&A Activity.

*Guaranty Transfer.* As described above, the purpose of the proposed changes is to increase the circumstances under which NSCC must assume the obligation to guaranty E&A Activity. Currently, the guaranty for such transactions transfers from OCC to NSCC after NSCC has received Required Fund Deposits from the Common Members. The guaranty would not transfer if a member fails to satisfy its obligations to NSCC. Under the proposed changes, the guaranty would transfer after NSCC has received Required Fund Deposits from the Common Members or at such time that OCC pays the GSP if a Common Member fails to satisfy its obligations to NSCC.

## **B. Phase 1 Changes to the NSCC Rules**

NSCC is also proposing changes to its Rules in connection with the proposed changes to the Existing Accord. First, NSCC would amend Rule 18 (Procedures for When the Corporation Ceases to Act), which describes how NSCC handles a Member's transactions after NSCC ceases to act for that Member.<sup>27</sup> Specifically, newly-added Section 9(a) would specify that following a Member default, NSCC may continue to act and provide the NSCC Guaranty pursuant to a "Close-Out Agreement" such as the Existing Accord (as it is proposed to be amended).<sup>28</sup> A new

---

<sup>27</sup> See *supra* note 21.

<sup>28</sup> The Existing Accord is currently the only agreement that would be considered a "Close-Out Agreement" under this new Section 9(b). See Notice of Amendment, 89 FR at 6147, n.54.



Section 9(b) would specify that any transactions undertaken pursuant to a Close-Out Agreement would be treated as having been received, provided or undertaken for the account of the Member for which NSCC has ceased to act, but that any deposit, payment, financial assurance or other accommodation provided to NSCC pursuant to a Close-Out Agreement shall be returned or released as provided for in the agreement. A new Section 9(c) would provide that NSCC shall have a lien upon, and may apply, any property of the defaulting Member in satisfaction of any obligation, liability or loss that relates to a transaction undertaken or service provided pursuant to a Close-Out Agreement. NSCC would also propose clarifications to Sections 4, 6(b)(iii)(B) and 8 of Rule 18 to use more precise references to the legal entity described in those sections of this Rule.

Second, NSCC would amend Section B of Procedure III and Addendum K of the NSCC Rules to provide that the NSCC Guaranty would not attach to Defaulted NSCC Member Transactions except as provided for in the Existing Accord (as it is proposed to be amended), and that the NSCC Guaranty attaches, with respect to obligations arising from the exercise or assignment of OCC options settled at NSCC or stock futures contracts cleared by OCC, as provided for in the Existing Accord (as it is proposed to be amended) or other arrangement with OCC. Finally, the proposed changes to Procedure III would clarify that Guaranty Substitution occurs when NSCC receives both the Required Fund Deposit SLD, consistent with the proposed revisions to Section 5 of the Current Accord. As noted above, the proposed collection of the SLD in connection with the Guaranty Substitution reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment. NSCC also proposes to make a number of non-substantive clean up changes to Procedure III, such as correcting references to NSCC's "guaranty."

NSCC states that these proposed changes would establish and clarify the rights of both NSCC and a Member for which NSCC has ceased to act and the operation and applicability of any Close-Out Agreement, and would make it clear that any payments received pursuant to a Close-Out Agreement and NSCC's acceptance of a Mutually Suspended Member's transactions for clearance and settlement pursuant to a Close-Out Agreement are intended to fall within the Bankruptcy Code and Securities Investor Protection Act "safe harbors."<sup>29</sup>

### **C. Transition to T+1**

Phase 1 of the proposed changes are primarily designed to provide OCC the right to require NSCC to accept and guaranty the E&A Activity of a Common Member even if that member has not met its obligations to NSCC. The mechanism by which OCC would exercise that right would be the payment of the GSP to NSCC, and OCC would account for such payment as a potential liquidity demand that it must manage. Phase 1 does not, however, materially change the time at which OCC would cease (and NSCC would start) to guaranty the E&A Activity.<sup>30</sup>

Under the current Accord, NSCC's guaranty attaches (and OCC's ceases) when NSCC has received all Required Fund Deposits taking into account the E&A Activity.<sup>31</sup> Currently, NSCC's guaranty would not attach if a Common Member defaults on its obligations to NSCC. Under Phase 1 of the proposed changes, however, OCC would have the opportunity to pay the GSP to NSCC as an effective substitution for the defaulted member's obligations with respect to

---

<sup>29</sup> See *id.* at 6147-48.

<sup>30</sup> The Commission described the current timing and process under which OCC's guaranty ceases and NSCC's guaranty attaches in a prior order. See Securities Exchange Act Release No. 81266 (July 31, 2017), 82 FR 36484, 36486-87 (Aug. 4, 2017) (File No. SR-OCC-2017-013).

<sup>31</sup> See *id.* at 36487.

the E&A Activity. Phase 1, therefore, allows for a change in who pays NSCC, but does not alter the timing of payment.

Phase 2 will alter the timing of payment, primarily to accommodate the transition from a T+2 settlement cycle to a T+1 settlement cycle.<sup>32</sup> Under the current process, which takes place in a T+2 settlement cycle, there is sufficient time after expiration for NSCC and OCC to determine whether a member has defaulted before NSCC begins to process settlement of the E&A Activity. However, in a T+1 settlement cycle, settlement processing could begin before NSCC or OCC become aware of a member default. Thus, in a T+1 environment, the timing and process by which OCC's guaranty would cease (and NSCC's would attach) would need to shift.

Specifically, under Phase 2, OCC would commit to payment of the GSP (regardless of whether a member has defaulted) prior to NSCC's acceptance of E&A Activity. If OCC is unable to commit to pay the GSP, NSCC would be permitted, but not required, to reject the E&A Activity. The process would vary slightly between expirations occurring on a Friday and expirations occurring Monday through Thursday. For a Friday expiration, NSCC would communicate the GSP to OCC and OCC would subsequently commit to pay the GSP on Saturday morning. For Monday through Thursday expirations, OCC's transmission of the E&A Activity itself to NSCC would constitute a commitment by OCC to pay the GSP related to that E&A Activity.<sup>33</sup> For all expirations, OCC would send the E&A Activity to NSCC by 1 a.m. the morning after expiration (e.g., 1 a.m. Saturday for a Friday expiration). This would help ensure

---

<sup>32</sup> See Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7-05-22).

<sup>33</sup> The requirement to commit prior to calculation of the final GSP for E&A Activity arising Monday through Thursday highlights the importance of the improved information sharing described above.

that, in a T+1 settlement environment, NSCC has OCC's commitment to pay the GSP before NSCC must begin processing any E&A Activity from OCC.

**D. Phase 2 Changes to the NSCC Rules**

NSCC is also proposing conforming changes to its Rules to align with the Phase 2 Accord. Specifically, NSCC would amend Section B of Procedure III of the NSCC to remove references to Balance Order Securities and the Balance Order Accounting Operation in Procedure III to align with the removal of Balance Order transactions from the types of Eligible Securities under the Phase 2 Accord. NSCC would also update a reference to the Settlement Date for OCC E&A/Delivery Transactions to reflect that it would be one business day (rather than two business days) after exercise/assignment under the forthcoming T+1 settlement cycle. In addition, NSCC would clarify in Procedure III that E&A/Delivery Transactions that are indicated in a report or Consolidated Trade Summary will have no impact on NSCC's guaranty or a Member's ultimate obligation to deliver or pay for the receipt of such securities unless and until such transactions have satisfied all requirements for the NSCC's guaranty under Addendum K and the new Accord (unless NSCC notifies Members to the contrary). NSCC would also clarify that E&A/Delivery Transactions indicated in a report or Consolidated Trade Summary for which the NSCC's guaranty does become effective will be canceled and thereafter null and void and such cancelation will be reflected in the next available report or Consolidated Trade Summary. The proposed changes are intended to reflect the timing of the receipt and processing of E&A/Delivery Transactions under the T+1 settlement cycle and the ultimate Guaranty Substitution and Guaranty Substitution Time under the Phase 2 Accord.<sup>34</sup>

---

<sup>34</sup> See Notice of Amendment, 89 FR at 6151.

### **III. DISCUSSION AND COMMISSION FINDINGS**

Section 19(b)(2)(C) of the Exchange Act 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 Exchange Act and the rules and regulations thereunder applicable to such organization.<sup>35</sup> After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to NSCC. More specifically, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Exchange Act,<sup>36</sup> and Rules 17Ad-22(e)(1), (e)(7), and (e)(20)<sup>37</sup> thereunder, as described in detail below.

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

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.<sup>38</sup> Based on its review of the record, and for the reasons described below, allowing NSCC to make the changes described above is consistent with promoting prompt and accurate clearance and settlement of securities transactions, fostering cooperation and coordination between with persons engaged in the clearance and settlement of securities transactions, and, in general, the protection of investors and the public interest.

---

<sup>35</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>36</sup> 15 U.S.C. 78q-1(b)(3)(A).

<sup>37</sup> 17 CFR 240.17Ad-22(e)(1); 17 CFR 240.17Ad-22(e)(7); and 17 CFR 240.17Ad-22(e)(20).

<sup>38</sup> 15 U.S.C. 78q-1(b)(3)(F).

By providing OCC with the ability to make a Guarantee Substitution Payment to NSCC for any unmet obligations of a Mutually Suspended Member, the proposed changes to the Accord and conforming changes to the NSCC Rules would allow NSCC to continue to accept E&A Activity during a Common Member default while ensuring that it has sufficient liquid resources to address the credit and liquidity risks that the defaulting Common Member would pose to NSCC. Processing E&A Activity through NSCC's netting system would also significantly reduce the risk posed by such E&A Activity by reducing the volume and value of settlement obligations.<sup>39</sup> Further, the information sharing contemplated under the proposed changes would allow NSCC to better understand and monitor its exposures and provide for more dialogue between NSCC and OCC, which could, in turn, allow them to better manage the processing of E&A Activity. Therefore, the Proposed Rule Change should promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.<sup>40</sup>

Phase 2 contemplates further enhancement of information sharing between two clearing agencies as well as updating the Accord to support the shortening of the standard settlement cycle for most broker-dealer transactions from T+2 to T+1. Enhanced information sharing would support closer coordination and cooperation between OCC and NSCC through frequent dialogue. For example, the communication of the Historical Peak GSP would allow OCC to assess its liquidity resources and facilitate discussion of whether OCC will likely be in a position to commit to paying the actual GSP. The changes to support the shortening of the standard

---

<sup>39</sup> As noted above, it is estimated that, in 2022, netting through NSCC's CNS accounting system reduced the value of CNS settlement obligations by approximately 98 percent or \$510 trillion from \$519 trillion to \$9 trillion. *See* Notice of Filing, 88 FR at 59969.

<sup>40</sup> 15 U.S.C. 78q-1(b)(3)(F).

settlement cycle would allow OCC and NSCC to coordinate as they seek to comply with the relevant rulemaking adopted by the Commission under the Exchange Act consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.<sup>41</sup>

Finally, the ability for OCC to make a Guarantee Substitution Payment to NSCC for any unmet obligations of a Mutually Suspended Member would allow NSCC to continue to accept E&A Activity during a Common Member default while ensuring that it has sufficient liquid resources to address the credit and liquidity risks that the defaulting Common Member would pose to NSCC and also reducing the risk of significant liquidity or credit problems spreading among market participants that rely on OCC's central role in the options market.<sup>42</sup> The Proposed Rule Change would, therefore, generally support the protection of investors and the public interest, consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act,<sup>43</sup> because it would reduce systemic risk.

Accordingly, and for the reasons stated above, the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.<sup>44</sup>

#### **B. Consistency with Rule 17Ad-22(e)(1) under the Exchange Act**

Rule 17Ad-22(e)(1) under the Exchange Act requires, in part, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each

---

<sup>41</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>42</sup> OCC has been designated as a systemically important financial market utility, in part, because its failure or disruption could increase the risk of significant liquidity or credit problems spreading among financial institutions or markets. See Financial Stability Oversight Council ("FSOC") 2012 Annual Report, Appendix A, <https://home.treasury.gov/system/files/261/here.pdf> (last visited Feb. 17, 2022).

<sup>43</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>44</sup> 15 U.S.C. 78q-1(b)(3)(F).

aspect of its activities in all relevant jurisdictions.<sup>45</sup> In adopting Rule 17Ad-22(e)(1), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address legal risk.<sup>46</sup> The Commission stated that a covered clearing agency should consider, *inter alia*, whether its contracts are consistent with relevant laws and regulations.<sup>47</sup>

On February 15, 2023, the Commission adopted a final rule to shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date to one business day after the trade date.<sup>48</sup> Currently, and under Phase 1, the terms of the Accord are designed for consistency with a T+2 settlement cycle. As described above, the terms of the Accord under Phase 2, which NSCC intends to implement on the T+1 compliance date established by the Commission,<sup>49</sup> would be designed for consistency with a T+1 settlement cycle.

Accordingly, the proposal to amend the Accord to conform to a T+1 settlement cycle is consistent with Rule 17Ad-22(e)(1) under the Exchange Act.<sup>50</sup>

### **C. Consistency with Rule 17Ad-22(e)(7) under the Exchange Act**

Rule 17Ad-22(e)(7) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the

---

<sup>45</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>46</sup> *See* Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70802 (Oct. 13, 2016) (S7-03-14) (“Covered Clearing Agency Standards”).

<sup>47</sup> *See id.*

<sup>48</sup> *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7-05-22).

<sup>49</sup> *See* Notice of Amendment, 89 FR at 6152.

<sup>50</sup> 17 CFR 240.17Ad-22(e)(1).



covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.<sup>51</sup> In adopting Rule 17Ad-22(e)(7), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address liquidity risk.<sup>52</sup> The Commission stated that a covered clearing agency should consider, *inter alia*, whether it maintains sufficient liquid resources in all relevant currencies to settle securities-related payments and meet other payment obligations on time with a high degree of confidence under a wide range of stress scenarios.<sup>53</sup>

The proposed changes to the Accord would provide OCC with the ability to make a cash payment to NSCC (i.e., the GSP) for any unmet obligations of a Mutually Suspended Member. As a result, the GSP would allow NSCC to accept E&A Activity during a Common Member default while ensuring that it has sufficient liquid resources to address the credit and liquidity risks that the defaulting Common Member would pose to NSCC. As a result, the proposed changes would facilitate the NSCC's management of its liquidity risks posed by E&A Activity because, any increase to NSCC's liquidity needs that may be created by applying the NSCC Guaranty to Defaulted Member Transactions would occur with a simultaneous increase to its liquidity resources in the form of the Guaranty Substitution Payment.

Accordingly, the proposed changes to the Accord and NSCC's Rules are consistent with Rule 17Ad-22(e)(7) under the Exchange Act.<sup>54</sup>

---

<sup>51</sup> 17 CFR 240.17Ad-22(e)(7).

<sup>52</sup> *See* Covered Clearing Agency Standards, 81 FR at 70823.

<sup>53</sup> *See id.*

<sup>54</sup> 17 CFR 240.17Ad-22(e)(7).

**D. Consistency with Rule 17Ad-22(e)(20) under the Exchange Act**

Rule 17Ad-22(e)(20) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.<sup>55</sup> For the purposes of Rule 17Ad-22(e)(20), “link” means, among other things, a set of contractual and operational arrangements between two or more clearing agencies, financial market utilities, or trading markets that connect them directly or indirectly for the purpose of participating in settlement.<sup>56</sup>

In adopting Rule 17Ad-22(e)(20), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address links.<sup>57</sup> Notably, the Commission stated that a covered clearing agency should consider whether a link has a well-founded legal basis, in all relevant jurisdictions, that supports its design and provides adequate protection to the covered clearing agencies involved in the link.<sup>58</sup>

As described above, the Accord is a contractual arrangement between NSCC and OCC that governs the processing of E&A Activity, which consists of settlement obligations arising out of certain products cleared by OCC. The Accord, therefore, is a link for the purposes of Rule 17Ad-22(e)(20). The specific legal basis for the Accord to conform to a T+1 settlement cycle was discussed above in section III.B. Likewise, Section II discussed the ways the Accord

---

<sup>55</sup> 17 CFR 240.17Ad-22(e)(20).

<sup>56</sup> 17 CFR 240.17Ad-22(a)(8).

<sup>57</sup> *See* Covered Clearing Agency Standards, 81 FR at 70841.

<sup>58</sup> *Id.*

provides adequate protection to both OCC and NSCC by introducing the GSP, enhancing information sharing between OCC and NSCC, and ensuring that OCC and NSCC have the tools and information they need to monitor the potential liquidity need posed by the GSP.

For the reasons discussed in those sections, the Accord between OCC and NSCC has a well-founded legal basis that supports its design and provides adequate protection to the covered clearing agencies involved in the Accord. Accordingly, the proposed changes to the Accord and NSCC's Rules are consistent with Rule 17Ad-22(e)(20) under the Exchange Act.<sup>59</sup>

#### **IV. CONCLUSION**

On the basis of the foregoing, the Commission finds that the Proposed Rule Change, as modified by Partial Amendment No. 1 and Amendment No. 2, is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act<sup>60</sup> and the rules and regulations thereunder.

---

<sup>59</sup> 17 CFR 240.17Ad-22(e)(20).

<sup>60</sup> In approving the Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,<sup>61</sup> that the Proposed Rule Change, as modified by Partial Amendment No. 1 and Amendment No. 2, (SR-NSCC-2023-007) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>62</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

---

<sup>61</sup> 15 U.S.C. 78s(b)(2).

<sup>62</sup> 17 CFR 200.30-3(a)(12).