

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94494; File No. SR-NSCC-2021-016)

March 23, 2022

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Enhance Capital Requirements and Make Other Changes

I. Introduction

On December 13, 2021, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-NSCC-2021-016 (the “Proposed Rule Change”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² The Proposed Rule Change was published for comment in the Federal Register on December 29, 2021,³ and the Commission has received comments regarding the changes proposed in the Proposed Rule Change.⁴

On January 26, 2022, pursuant to Section 19(b)(2) of the Act,⁵ 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.⁶ This order

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 93856 (December 22, 2021), 86 Fed. Reg. 74185 (December 29, 2021) (SR-NSCC-2021-016) (“Notice”).

⁴ Comments are available at <https://www.sec.gov/comments/sr-nsc-2021-016/srnsc2021016.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ Securities Exchange Act Release No. 94068 (January 26, 2022), 87 Fed. Reg. 5544 (February 1, 2022) (SR-NSCC-2021-016).

institutes proceedings, pursuant to Section 19(b)(2)(B) of the Act,⁷ to determine whether to approve or disapprove the Proposed Rule Change.

II. Summary of the Proposed Rule Change

As described in the Notice, NSCC proposes to amend the Rules and Procedures (“Rules”) in order to (1) revise its capital requirements for Members and Limited Members (collectively, “members”), (2) streamline its two credit risk monitoring systems, Watch List and enhanced surveillance list, and (3) make certain other clarifying, technical, and supplementary changes to implement items (1) and (2).⁸

First, NSCC proposes to revise various aspects of its capital requirements for several types of members. NSCC proposes to increase minimum capital requirements for certain members. For example, for U.S. broker-dealers, the capital requirements would be determined using a tiered system based generally on the volatility component of a member’s margin (referred to as the value-at-risk tier). NSCC also proposes to revise how it measures certain members’ capital by incorporating common equity tier 1 capital, and the standards established in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation. NSCC would revise the reporting requirements concerning the capital requirements for certain members. In addition, for certain types of members who currently do not have specific amounts for their minimum capital requirements, the proposal would establish such a requirement.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ The description of the Proposed Rule Change is based on the statements prepared by NSCC in the Notice. See Notice, supra note 3. Capitalized terms used herein and not otherwise defined herein are defined in the Rules, available at https://www.dtcc.com/-/media/Files/Downloads/legal/rules/nsc_rules.pdf.

Second, NSCC proposes to revise its Watch List and enhanced surveillance list, which are both currently used for credit risk monitoring. NSCC proposes to revise its Watch List and delete its enhanced surveillance list. NSCC also proposes to clarify that members on the Watch List are reported to NSCC's management committees and regularly reviewed by NSCC's senior management.

Third, NSCC proposes to (1) revise or add headings and sub-headings as appropriate, (2) revise defined terms and add appropriate defined terms to facilitate the proposed changes, (3) rearrange and consolidate paragraphs to promote readability, (4) fix typographical and other errors, and (5) other changes in order to improve clarity and the accessibility and transparency of the Rules.

III. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁹ to determine whether the Proposed Rule Change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, providing the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

⁹ 15 U.S.C. 78s(b)(2)(B).

Pursuant to Section 19(b)(2)(B) of the Act,¹⁰ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Act,¹¹ and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Act,¹² which requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to protect investors and the public interest;
- Section 17A(b)(3)(I) of the Act,¹³ which requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act;
- Rule 17Ad-22(e)(18) under the Act,¹⁴ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities,

¹⁰ Id.

¹¹ 15 U.S.C. 78q-1.

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 15 U.S.C. 78q-1(b)(3)(I).

¹⁴ 17 CFR 240.17Ad-22(e)(18).

require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,¹⁵ Section 17A(b)(3)(I) of the Act,¹⁶ Rule 17Ad-22(e)(18) under the Act,¹⁷ or any other provision of the Act, or the rules and regulations thereunder.

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

The Commission asks that commenters address the sufficiency of NSCC's statements in support of the Proposed Rule Change, which are set forth in the Notice,¹⁸ in

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 15 U.S.C. 78q-1(b)(3)(I).

¹⁷ 17 CFR 240.17Ad-22(e)(18).

¹⁸ See Notice, supra note 3.

addition to any other comments they may wish to submit about the Proposed Rule Change.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSCC-2021-016 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NSCC-2021-016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the

principal office of NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2021-016 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(31).