DTCC

Securing Today. Shaping Tomorrow.®

**Jacqueline Chezar**
*Executive Director and*
*Associate General Counsel*

55 Water Street
New York, New York 10041 0099
[redacted]

June 28, 2018

By Electronic Mail (rule-comments@sec.gov)

Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **Amendments No. 1 to File No. SR-NSCC-2017-017 and File No. SR-NSCC-2017-805**

Dear Mr. Errett:

National Securities Clearing Corporation filed Amendments No. 1 to File Nos. SR-NSCC-2017-017 and SR-NSCC-2017-805 on June 28, 2018, copies of which are enclosed.

Sincerely,

[redacted]

Jacqueline Chezar
Executive Director and
Associate General Counsel

| OMB APPROVAL |
| --- |
| OMB Number: 3235-0045<br>Estimated average burden hours per response.....38 |

*Required fields are shown with yellow backgrounds and asterisks.*

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b 4

File No.* SR 2017 * 017
Amendment No. (req. for Amendments *) 1

Filing by National Securities Clearing Corporation

Pursuant to Rule 19b 4 under the Securities Exchange Act of 1934

| Initial * | Amendment * | Withdrawal | Section 19(b)(2) * | Section 19(b)(3)(A) * | Section 19(b)(3)(B) * |
| --- | --- | --- | --- | --- | --- |
| ☐ | ☑ | ☐ | ☑ | ☐ | ☐ |

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b 4(f)(1) ☐ 19b 4(f)(4)
☐ 19b 4(f)(2) ☐ 19b 4(f)(5)
☐ 19b 4(f)(3) ☐ 19b 4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

Security Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

**Contact Information**

Provide the name, telephone number, and e mail address of the person on the staff of the self regulatory organization prepared to respond to questions and comments on the action.

First Name * Jacqueline Last Name * Chezar

Title * Executive Director and Associate General Counsel

E mail * [redacted]

Telephone * [redacted] Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 06/28/2018

By Nikki Poulos

(Name *)

(Title *)

Managing Director and Deputy General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

[redacted]

*Required fields are shown with yellow backgrounds and asterisks.*

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b 4 instructions please refer to the EFFS website.

| | |
|---|---|
| **Form 19b-4 Information ***<br>Add Remove View | The self regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act. |
| **Exhibit 1 - Notice of Proposed Rule Change ***<br>Add Remove View | The Notice section of this Form 19b 4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR [SRO] xx xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0 3 under the Act (17 CFR 240.0 3) |
| **Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies ***<br>Add Remove View | The Notice section of this Form 19b 4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR [SRO] xx xx). A material failure to comply with these guidelines will result in the proposed rule change, security based swap submission, or advance notice being deemed not properly filed. See also Rule 0 3 under the Act (17 CFR 240.0 3) |
| **Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**<br>Add Remove View<br>Exhibit Sent As Paper Document<br>☐ | Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G. |
| **Exhibit 3 - Form, Report, or Questionnaire**<br>Add Remove View<br>Exhibit Sent As Paper Document<br>☐ | Copies of any form, report, or questionnaire that the self regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change. |
| **Exhibit 4 - Marked Copies**<br>Add Remove View | The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working. |
| **Exhibit 5 - Proposed Rule Text**<br>Add Remove View | The self regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b 4. Exhibit 5 shall be considered part of the proposed rule change. |
| **Partial Amendment**<br>Add Remove View | If the self regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions. |

## 1. Text of Proposed Rule Change

(a) The proposed rule change of National Securities Clearing Corporation ("NSCC") proposes to (1) adopt the Recovery & Wind-down Plan of NSCC ("R&W Plan" or "Plan"), attached hereto as Exhibit 5a; and (2) amend NSCC's Rules & Procedures ("Rules")[1] in order to adopt Rule 41 (Corporation Default), Rule 42 (Wind-down of the Corporation), and Rule 60 (Market Disruption and Force Majeure) (each a "Proposed Rule" and, collectively, the "Proposed Rules"), attached hereto as Exhibit 5b. The proposed rule change would also propose to re-number the current Rule 42 (Wind-down of a Member, Fund Member or Insurance Carrier/Retirement Services Member) to Rule 40, which is currently reserved for future use.

The R&W Plan would be maintained by NSCC in compliance with Rule 17Ad-22(e)(3)(ii) under the Securities Exchange Act of 1934 ("Act"), by providing plans for the recovery and orderly wind-down of NSCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described below.[2] The Proposed Rules are designed to (1) facilitate the implementation of the R&W Plan when necessary and, in particular, allow NSCC to effectuate its strategy for winding down and transferring its business; (2) provide Members and Limited Members with transparency around critical provisions of the R&W Plan that relate to their rights, responsibilities and obligations; and (3) provide NSCC with the legal basis to implement those provisions of the R&W Plan when necessary, as described below.

(b) Not applicable.

(c) Not applicable.

## 2. Procedures of the Self-Regulatory Organization

The proposal was approved by the Board of Directors of NSCC ("Board") at a meeting duly called and held on October 18, 2017.

## 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

*Description of Amendment No. 1*

This filing constitutes Amendment No. 1 ("Amendment") to the proposed rule change SR-NSCC-2017-017 ("Original Filing") previously filed by NSCC.[3] NSCC is amending the

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1 Capitalized terms used herein and not otherwise defined herein are defined in the Rules, available at www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.

2 17 CFR 240.17Ad-22(e)(3)(ii).

3 See Securities Exchange Act Release No. 82581 (January 24, 2018), 83 FR 4327 (January 30, 2018) (SR-NSCC-2017-805).

proposed R&W Plan and the Original Filing in order to clarify certain matters and make minor technical and conforming changes to the R&W Plan, as described below and as marked on Exhibit 4 hereto. To the extent such changes to the Plan require changes to the Original Filing, the information provided under "*Description of Proposed Changes*" in the Original Filing has been amended and is restated in its entirety below. Other sections of the Original Filing are unchanged and are restated in their entity for convenience.

First, this Amendment would clarify the meaning of the terms "cease to act," "Member default," "Defaulting Member," and "Member Default Losses" as such terms are used in the Plan. This Amendment would also make conforming changes as necessary to reflect the use of these terms.

Second, this Amendment would clarify that actions and tools described in the Plan that are available in one phase of the Crisis Continuum may be used in subsequent phases of the Crisis Continuum when appropriate to address the applicable situation. This Amendment would also clarify that the allocation of losses resulting from a Member default would be applied when provided for, and in accordance with, Rule 4 of the Rules.

Third, this Amendment would clarify that the Recovery Corridor (as defined therein) is not a "sub-phase" of the recovery phase. Rather, the Recovery Corridor is a period of time that would occur toward the end of the Member default phase, when indicators are that NSCC may transition into the recovery phase. Thus, the Recovery Corridor precedes the recovery phase within the Crisis Continuum.

Fourth, this Amendment would make revisions to address the allocation of losses resulting from a Member default in order to more closely conform such statements to the changes proposed by the Loss Allocation Filing, as defined below.

Fifth, this Amendment would clarify the notifications that NSCC would be required to make under the Proposed Rule 60 (Market Disruption and Force Majeure).

Finally, this Amendment would make minor, technical and conforming revisions to correct typographical errors and to simplify descriptions. For example, such revisions would use lower case for terms that are not defined therein, and would use upper case for terms that are defined. The Amendment would also simplify certain descriptions by removing extraneous words and statements that are repetitive. These minor, technical revisions would not alter the substance of the proposal.

*Description of Proposed Changes*

NSCC is proposing to adopt the R&W Plan to be used by the Board and management of NSCC in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would identify (i) the recovery tools available to NSCC to address the risks of (a) uncovered losses or liquidity shortfalls resulting from the default of one or more Members, and (b) losses arising from non-default events, such as damage to its physical assets, a cyber-attack, or custody and investment losses, and (ii) the strategy for implementation of such tools. The R&W Plan would also establish the

strategy and framework for the orderly wind-down of NSCC and the transfer of its business in the remote event the implementation of the available recovery tools does not successfully return NSCC to financial viability.

As discussed in greater detail below, the R&W Plan would provide, among other matters, (i) an overview of the business of NSCC and its parent, The Depository Trust & Clearing Corporation ("DTCC"); (ii) an analysis of NSCC's intercompany arrangements and critical links to other financial market infrastructures ("FMIs"); (iii) a description of NSCC's services, and the criteria used to determine which services are considered critical; (iv) a description of the NSCC and DTCC governance structure; (v) a description of the governance around the overall recovery and wind-down program; (vi) a discussion of tools available to NSCC to mitigate credit/market and liquidity risks, including recovery indicators and triggers, and the governance around management of a stress event along a "Crisis Continuum" timeline; (vii) a discussion of potential non-default losses and the resources available to NSCC to address such losses, including recovery triggers and tools to mitigate such losses; (viii) an analysis of the recovery tools' characteristics, including how they are comprehensive, effective, and transparent, how the tools provide appropriate incentives to Members to, among other things, control and monitor the risks they may present to NSCC, and how NSCC seeks to minimize the negative consequences of executing its recovery tools; and (ix) the framework and approach for the orderly wind-down and transfer of NSCC's business, including an estimate of the time and costs to effect a recovery or orderly wind-down of NSCC.

The R&W Plan would be structured as a roadmap, and would identify and describe the tools that NSCC may use to effect a recovery from the events and scenarios described therein. Certain recovery tools that would be identified in the R&W Plan are based in the Rules (including the Proposed Rules) and, as such, descriptions of those tools would include descriptions of, and reference to, the applicable Rules and any related internal policies and procedures. Other recovery tools that would be identified in the R&W Plan are based in contractual arrangements to which NSCC is a party, including, for example, existing committed or pre-arranged liquidity arrangements. Further, the R&W Plan would state that NSCC may develop further supporting internal guidelines and materials that may provide operationally for matters described in the Plan, and that such documents would be supplemental and subordinate to the Plan.

Key factors considered in developing the R&W Plan and the types of tools available to NSCC were its governance structure and the nature of the markets within which NSCC operates. As a result of these considerations, many of the tools available to NSCC that would be described in the R&W Plan are NSCC's existing, business-as-usual risk management and Member default management tools, which would continue to be applied in scenarios of increasing stress. In addition to these existing, business-as-usual tools, the R&W Plan would describe NSCC's other principal recovery tools, which include, for example, (i) identifying, monitoring and managing general business risk and holding sufficient liquid net assets funded by equity ("LNA") to cover potential general business losses pursuant to the Clearing Agency Policy on Capital Requirements ("Capital Policy"),[4] (ii) maintaining the Clearing Agency Capital Replenishment

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[4] See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR-DTC-2017-003, SR-FICC-2017-007, SR-NSCC-2017-004).

Plan ("Replenishment Plan") as a viable plan for the replenishment of capital should NSCC's equity fall close to or below the amount being held pursuant to the Capital Policy,[5] and (iii) the process for the allocation of losses among Members, as provided in Rule 4.[6] The R&W Plan would provide governance around the selection and implementation of the recovery tool or tools most relevant to mitigate a stress scenario and any applicable loss or liquidity shortfall.

The development of the R&W Plan is facilitated by the Office of Recovery & Resolution Planning ("R&R Team") of DTCC.[7] The R&R Team reports to the DTCC Management Committee ("Management Committee") and is responsible for maintaining the R&W Plan and for the development and ongoing maintenance of the overall recovery and wind-down planning process. The Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, would review and approve the R&W Plan biennially, and would also review and approve any changes that are proposed to the R&W Plan outside of the biennial review.

As discussed in greater detail below, the Proposed Rules would define the procedures that may be employed in the event of NSCC's default and its wind-down, and would provide for NSCC's authority to take certain actions on the occurrence of a "Market Disruption Event," as defined therein. Significantly, the Proposed Rules would provide Members and Limited Members with transparency and certainty with respect to these matters. The Proposed Rules would facilitate the implementation of the R&W Plan, particularly NSCC's strategy for winding down and transferring its business, and would provide NSCC with the legal basis to implement those aspects of the R&W Plan.

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5 See id.

6 See Rule 4 (Clearing Fund), supra note 1. NSCC is proposing changes to Rule 4 and other related rules regarding allocation of losses in a separate filing submitted simultaneously with the Original Filing. See Securities Exchange Act Release Nos. 82430 (January 2, 2018), 83 FR 841 (January 8, 2018) (SR-NSCC-2017-017) and 82581 (January 24, 2018), 83 FR 4327 (January 30, 2018) (SR-NSCC-2017-805) (collectively referred to herein as the "Loss Allocation Filing"). NSCC has submitted an amendment to the Loss Allocation Filing. A copy of the amendment to the Loss Allocation Filing is available at http://www.dtcc.com/legal/sec-rule-filings.aspx. NSCC expects the U.S. Securities and Exchange Commission ("Commission") to review both proposals, as amended, together, and, as such, the proposal described in this filing anticipates the approval and implementation of those proposed changes to the Rules.

7 DTCC operates on a shared services model with respect to NSCC and its other subsidiaries. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a subsidiary, including NSCC.

***NSCC R&W Plan***

The R&W Plan is intended to be used by the Board and NSCC's management in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would be structured to provide a roadmap, define the strategy, and identify the tools available to NSCC to either (i) recover in the event it experiences losses that exceed its prefunded resources (such strategies and tools referred to herein as the "Recovery Plan") or (ii) wind-down its business in a manner designed to permit the continuation of its critical services in the event that such recovery efforts are not successful (such strategies and tools referred to herein as the "Wind-down Plan"). The description of the R&W Plan below is intended to highlight the purpose and expected effects of the material aspects of the R&W Plan, and to provide Members and Limited Members with appropriate transparency into these features.

Business Overview, Critical Services, and Governance

The introduction to the R&W Plan would identify the document's purpose and its regulatory background, and would outline a summary of the Plan. The stated purpose of the R&W Plan is that it is to be used by the Board and NSCC management in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would be maintained by NSCC in compliance with Rule 17Ad-22(e)(3)(ii) under the Act[8] by providing plans for the recovery and orderly wind-down of NSCC.

The R&W Plan would describe DTCC's business profile, provide a summary of NSCC's services, and identify the intercompany arrangements and links between NSCC and other entities, including other FMIs. This overview section would provide a context for the R&W Plan by describing NSCC's business, organizational structure and critical links to other entities. By providing this context, this section would facilitate the analysis of the potential impact of utilizing the recovery tools set forth in later sections of the Recovery Plan, and the analysis of the factors that would be addressed in implementing the Wind-down Plan.

DTCC is a user-owned and user-governed holding company and is the parent company of NSCC and its affiliates, The Depository Trust Company ("DTC") and Fixed Income Clearing Corporation ("FICC", and, together with NSCC and DTC, the "Clearing Agencies"). The Plan would describe how corporate support services are provided to NSCC from DTCC and DTCC's other subsidiaries through intercompany agreements under a shared services model.

The Plan would provide a description of established links between NSCC and other FMIs, including The Options Clearing Corporation ("OCC"), CDS Clearing and Depository Services Inc. ("CDS"), and DTC. For example, the arrangement between NSCC and OCC governs the process by which OCC submits transactions to NSCC for settlement, and sets the time when the settlement obligations and the central counterparty trade guaranty shifts from

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[8] 17 CFR 240.17Ad-22(e)(3)(ii).

OCC to NSCC with respect to these transactions.[9] The arrangement with CDS enables participants of CDS to clear and settle OTC trades with U.S. broker-dealers through subaccounts maintained by CDS through its own membership with NSCC.[10] The interface between DTC and NSCC permits transactions to flow between DTC's system and NSCC's Continuous Net Settlement ("CNS") system in a collateralized environment.[11] NSCC's CNS relies on this interface with DTC for the book-entry movement of securities to settle transactions. This section of the Plan, identifying and briefly describing NSCC's established links, would provide a mapping of critical connections and dependencies that may need to be relied on or otherwise addressed in connection with the implementation of either the Recovery Plan or the Wind-down Plan.

The Plan would define the criteria for classifying certain of NSCC's services as "critical," and would identify those critical services and the rationale for their classification. This section would provide an analysis of the potential systemic impact from a service disruption, and is important for evaluating how the recovery tools and the wind-down strategy would facilitate and provide for the continuation of NSCC's critical services to the markets it serves. The criteria that would be used to identify an NSCC service or function as critical would include consideration as to (1) whether there is a lack of alternative providers or products; (2) whether failure of the service could impact NSCC's ability to perform its central counterparty services; (3) whether failure of the service could impact NSCC's ability to perform its netting services, and, as such, the availability of market liquidity; and (4) the service is interconnected with other participants and processes within the U.S. financial system, for example, with other FMIs, settlement banks, broker-dealers, and exchanges. The Plan would then list each of those services, functions or activities that NSCC has identified as "critical" based on the applicability of these four criteria. Such critical services would include, for example, trade capture and recording through the Universal Trade Capture system,[12] services supporting Correspondent Clearing relationships,[13] the CNS system,[14] the Balance Order Netting system,[15] Mutual Funds Services,[16] and the

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9 See Securities Exchange Act Release Nos. 81266 (July 31, 2017), 82 FR 36484 (August 4, 2017) (SR-NSCC-2017-007, SR-OCC-2017-013); 81260 (July 31, 2017), 82 FR 36476 (August 4, 2017) (SR-NSCC-2017-803, SR-OCC-2017-804); Procedure III (Trade Recording Service (Interface with Qualified Clearing Agencies)), supra note 1.

10 See Rule 61 (International Links), supra note 1.

11 See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation), supra note 1.

12 See Rule 7 (Comparison and Trade Recording Operation) and Procedure II (Trade Comparison and Recording Service), supra note 1.

13 See Procedure IV (Special Representative Service), supra note 1.

14 See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation), supra note 1.

settlement of money payments with respect to transactions processed by NSCC.[17] The R&W Plan would also include a non-exhaustive list of NSCC services that are not deemed critical.

The evaluation of which services provided by NSCC are deemed critical is important for purposes of determining how the R&W Plan would facilitate the continuity of those services. As discussed further below, while NSCC's Wind-down Plan would provide for the transfer of all critical services to a transferee in the event NSCC's wind-down is implemented, it would anticipate that any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership, would also be transferred.

The Plan would describe the governance structure of both DTCC and NSCC. This section of the Plan would identify the ownership and governance model of these entities at both the Board of Directors and management levels. The Plan would state that the stages of escalation required to manage recovery under the Recovery Plan or to invoke NSCC's wind-down under the Wind-down Plan would range from relevant business line managers up to the Board through NSCC's governance structure. The Plan would then identify the parties responsible for certain activities under both the Recovery Plan and the Wind-down Plan, and would describe their respective roles. The Plan would identify the Risk Committee of the Board ("Board Risk Committee") as being responsible for oversight of risk management activities at NSCC, which include focusing on both oversight of risk management systems and processes designed to identify and manage various risks faced by NSCC, and, due to NSCC's critical role in the markets in which it operates, oversight of NSCC's efforts to mitigate systemic risks that could impact those markets and the broader financial system.[18] The Plan would identify the DTCC Management Risk Committee ("Management Risk Committee") as primarily responsible for general, day-to-day risk management through delegated authority from the Board Risk Committee. The Plan would state that the Management Risk Committee has delegated specific day-to-day risk management, including management of risks addressed through margining systems and related activities, to the DTCC Group Chief Risk Office ("GCRO"), which works with staff within the DTCC Financial Risk Management group. Finally, the Plan would describe the role of the Management Committee, which provides overall direction for all aspects of NSCC's business, technology, and operations and the functional areas that support these activities.

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15 See Rule 8 (Balance Order and Foreign Security Systems) and Procedure V (Balance Order Accounting Operation), supra note 1.

16 See Rule 52 (Mutual Funds Services), supra note 1.

17 See Rule 12 (Settlement) and Procedure VIII (Money Settlement Service), supra note 1.

18 The charter of the Board Risk Committee is available at http://www.dtcc.com/~/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Risk-Committee-Charter.pdf.

The Plan would describe the governance of recovery efforts in response to both default losses and non-default losses under the Recovery Plan, identifying the groups responsible for those recovery efforts. Specifically, the Plan would state that the Management Risk Committee provides oversight of actions relating to the default of a Member, which would be reported and escalated to it through the GCRO, and the Management Committee provides oversight of actions relating to non-default events that could result in a loss, which would be reported and escalated to it from the DTCC Chief Financial Officer ("CFO") and the DTCC Treasury group that reports to the CFO, and from other relevant subject matter experts based on the nature and circumstances of the non-default event.[19] More generally, the Plan would state that the type of loss and the nature and circumstances of the events that lead to the loss would dictate the components of governance to address that loss, including the escalation path to authorize those actions. As described further below, both the Recovery Plan and the Wind-down Plan would describe the governance of escalations, decisions, and actions under each of those plans.

Finally, the Plan would describe the role of the R&R Team in managing the overall recovery and wind-down program and plans for each of the Clearing Agencies.

NSCC Recovery Plan

The Recovery Plan is intended to be a roadmap of those actions that NSCC may employ to monitor and, as needed, stabilize its financial condition. As each event that could lead to a financial loss could be unique in its circumstances, the Recovery Plan would not be prescriptive and would permit NSCC to maintain flexibility in its use of identified tools and in the sequence in which such tools are used, subject to any conditions in the Rules or the contractual arrangement on which such tool is based. NSCC's Recovery Plan would consist of (1) a description of the risk management surveillance, tools, and governance that NSCC would employ across evolving stress scenarios that it may face as it transitions through a "Crisis Continuum," described below; (2) a description of NSCC's risk of losses that may result from non-default events, and the financial resources and recovery tools available to NSCC to manage those risks and any resulting losses; and (3) an evaluation of the characteristics of the recovery tools that may be used in response to either default losses or non-default losses, as described in greater detail below. In all cases, NSCC would act in accordance with the Rules, within the governance structure described in the R&W Plan, and in accordance with applicable regulatory oversight to address each situation in order to best protect NSCC, Members, and the markets in which it operates.

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[19] The Plan would state that these groups would be involved to address how to mitigate the financial impact of non-default losses, and in recommending mitigating actions, the Management Committee would consider information and recommendations from relevant subject matter experts based on the nature and circumstances of the non-default event. Any necessary operational response to these events, however, would be managed in accordance with applicable incident response/business continuity process; for example, processes established by the DTCC Technology Risk Management group would be followed in response to a cyber event.

*Managing Member Default Losses and Liquidity Needs Through the Crisis Continuum.* The Recovery Plan would describe the risk management surveillance, tools, and governance that NSCC may employ across an increasing stress environment, which is referred to as the "Crisis Continuum." This description would identify those tools that can be employed to mitigate losses, and mitigate or minimize liquidity needs, as the market environment becomes increasingly stressed. The phases of the Crisis Continuum would include (1) a stable market phase, (2) a stress market phase, (3) a phase commencing with NSCC's decision to cease to act for a Member or Affiliated Family of Members (referred to in the Plan as the " Member default phase"),[20] and (4) a recovery phase. This section of the Recovery Plan would address conditions and circumstances relating to NSCC's decision to cease to act for a Member pursuant to the Rules.[21] In the Plan, "cease to act" and the events that may lead to such decision, are used within the context of Rule 46 of the Rules.[22] Further, for ease of reference, the R&W Plan would, for purposes of the Plan, use the term "Member default" to refer to the event or events that precipitate NSCC ceasing to act for a Member or an Affiliated Family, would use the term "Defaulting Member" to refer to a Member for which NSCC has ceased to act, and would use the term "Member Default Losses" to refer to losses that arise out of or relate to the Member default (including any losses that arise from liquidation of that Member's portfolio), and to distinguish such losses from those that arise out of the business or other events not related to a Member default, which are separately addressed in the Plan.

The Recovery Plan would provide context to its roadmap through this Crisis Continuum by describing NSCC's ongoing management of credit, market and liquidity risk, and its existing process for measuring and reporting its risks as they align with established thresholds for its tolerance of those risks. The Recovery Plan would discuss the management of credit/market risk and liquidity exposures together, because the tools that address these risks can be deployed either separately or in a coordinated approach in order to address both exposures. NSCC manages these risk exposures collectively to limit their overall impact on NSCC and its membership. As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.[23] NSCC manages its liquidity risks with an objective

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20 The Plan would define an "Affiliated Family" of Members as a number of affiliated entities that are all Members of NSCC.

21 See Rule 46 (Restrictions on Access to Services), supra note 1.

22 Id.

23 See Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters), supra note 1. Because NSCC does not maintain a guaranty fund separate and apart from the Clearing Fund it collects from Members, NSCC monitors its credit exposure to its Members by managing the market risks of each Member's unsettled portfolio through the collection of the Clearing Fund. The aggregate of all Members' Required Fund Deposits comprises the Clearing Fund that represents NSCC's prefunded resources to address uncovered loss exposures, as provided for in proposed Rule 4. Therefore, NSCC's market risk management strategy is designed to comply with Rule

of maintaining sufficient resources to be able to fulfill obligations that have been guaranteed by NSCC in the event of a Member default that presents the largest aggregate liquidity exposure to NSCC over the settlement cycle.[24]

The Recovery Plan would outline the metrics and indicators that NSCC has developed to evaluate a stress situation against established risk tolerance thresholds. Each risk mitigation tool identified in the Recovery Plan would include a description of the escalation thresholds that allow for effective and timely reporting to the appropriate internal management staff and committees, or to the Board. The Recovery Plan would make clear that these tools and escalation protocols would be calibrated across each phase of the Crisis Continuum. The Recovery Plan would also establish that NSCC would retain the flexibility to deploy such tools either separately or in a coordinated approach, and to use other alternatives to these actions and tools as necessitated by the circumstances of a particular Member default, in accordance with the Rules. Therefore, the Recovery Plan would both provide NSCC with a roadmap to follow within each phase of the Crisis Continuum, and would permit it to adjust its risk management measures to address the unique circumstances of each event.

The Recovery Plan would describe the conditions that mark each phase of the Crisis Continuum, and would identify actions that NSCC could take as it transitions through each phase in order to both prevent losses from materializing through active risk management, and to restore the financial health of NSCC during a period of stress.

The stable market phase of the Crisis Continuum would describe active risk management activities in the normal course of business. These activities would include (1) routine monitoring of margin adequacy through daily review of back testing and stress testing results that review the adequacy of NSCC's margin calculations, and escalation of those results to internal and Board committees;[25] and (2) routine monitoring of liquidity adequacy through review of daily liquidity

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17Ad-22(e)(4) under the Act, where these risks are referred to as "credit risks." See also 17 CFR 240.17Ad-22(e)(4).

24 NSCC's liquidity risk management strategy, including the manner in which NSCC utilizes its liquidity tools, is described in the Clearing Agency Liquidity Risk Management Framework. See Securities Exchange Act Release Nos. 80489 (April 19, 2017), 82 FR 19120 (April 25, 2017) (SR-DTC-2017-004, SR-NSCC-2017-005, SR-FICC-2017-008); 81194 (July 24, 2017), 82 FR 35241 (July 28, 2017) (SR-DTC-2017-004, SR-NSCC-2017-005, SR-FICC-2017-008).

25 NSCC's stress testing practices are described in the Clearing Agency Stress Testing Framework (Market Risk). See Securities Exchange Act Release Nos. 80485 (April 19, 2017), 82 FR 19131 (April 25, 2017) (SR-DTC-2017-005, SR-FICC-2017-009, SR-NSCC-2017-006); 81192 (July 24, 2017), 82 FR 35245 (July 28, 2017) (SR-DTC-2017-005, SR-FICC-2017-009, SR-NSCC-2017-006).

studies that measure sufficiency of available liquidity resources to meet cash settlement obligations of the Member that would generate the largest aggregate payment obligation.[26]

The Recovery Plan would describe some of the indicators of the stress market phase of the Crisis Continuum, which would include, for example, volatility in market prices of certain assets where there is increased uncertainty among market participants about the fundamental value of those assets. This phase would involve general market stresses, when no Member default would be imminent. Within the description of this phase, the Recovery Plan would provide that NSCC may take targeted, routine risk management measures as necessary and as permitted by the Rules.

Within the Member default phase of the Crisis Continuum, the Recovery Plan would provide a roadmap for the existing procedures that NSCC would follow in the event of a Member default and any decision by NSCC to cease to act for that Member.[27] The Recovery Plan would provide that the objectives of NSCC's actions upon a Member or Affiliated Family default are to (1) minimize losses and market exposure of the affected Members and NSCC's non-Defaulting Members; and (2), to the extent practicable, minimize disturbances to the affected markets. The Recovery Plan would describe tools, actions, and related governance for both market risk monitoring and liquidity risk monitoring through this phase. For example, in connection with managing its market risk during this phase, NSCC would, pursuant to the Rules, (1) monitor and assess the adequacy of Clearing Fund resources; (2), when necessary and appropriate pursuant to the Rules, assess and collect additional margin requirements; and (3) follow its operational procedures to liquidate the Defaulting Member's portfolio. Management of liquidity risk through this phase would involve ongoing monitoring of the adequacy of NSCC's liquidity resources, and the Recovery Plan would identify certain actions NSCC may deploy as it deems necessary to mitigate a potential liquidity shortfall, which would include, for example, adjusting its strategy for closing out the Defaulting Member's portfolio or seeking additional liquidity resources. The Recovery Plan would state that, throughout this phase, relevant information would be escalated and reported to both internal management committees and the Board Risk Committee.

The Recovery Plan would also identify financial resources available to NSCC, pursuant to the Rules, to address losses arising out of a Member default. Specifically, Rule 4, as proposed to be amended by the Loss Allocation Filing, would provide that losses remaining after application of the Defaulting Member's resources be satisfied first by applying a "Corporate Contribution," and then, if necessary, by allocating remaining losses among the membership in accordance with such Rule 4.[28]

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26 See supra note 24.

27 See Rule 18 (Procedures for When the Corporation Declines or Ceases to Act) and Rule 46 (Restrictions on Access to Services), supra note 1.

28 See supra note 6. The Loss Allocation Filing proposes to amend Rule 4 to define the amount NSCC would contribute to address a loss resulting from either a Member default or a non-default event as the "Corporate Contribution." This amount would be 50

In order to provide for an effective and timely recovery, the Recovery Plan would describe the period of time that would occur near the end of the Member default phase, during which NSCC may experience stress events or observe early warning indicators that allow it to evaluate its options and prepare for the recovery phase (referred to in the Plan as the "Recovery Corridor"). The Recovery Plan would then describe the recovery phase of the Crisis Continuum, which would begin on the date that NSCC issues the first Loss Allocation Notice of the second loss allocation round with respect to a given "Event Period."[29] The recovery phase would describe actions that NSCC may take to avoid entering into a wind down of its business.

NSCC expects that significant deterioration of liquidity resources would cause it to enter the Recovery Corridor. As such, the Plan would describe the actions NSCC may take aimed at replenishing those resources. Recovery Corridor indicators may include, for example, a rapid and material change in market prices or substantial intraday activity volume by the Member that subsequently defaults, neither of which are mitigated by intraday margin calls, or subsequent defaults by other Members or Affiliated Families during a compressed time period. Throughout the Recovery Corridor, NSCC would monitor the adequacy of its resources and the expected timing of replenishment of those resources, and would do so through the monitoring of certain corridor indicator metrics.

The majority of the corridor indicators, as identified in the Recovery Plan, relate directly to conditions that may require NSCC to adjust its strategy for hedging and liquidating a Defaulting Member's portfolio, and any such changes would include an assessment of the status of the corridor indicators. Corridor indicators would include, for example, effectiveness and speed of NSCC's efforts to close out the portfolio of the Defaulting Member, and an impediment to the availability of its financial resources. For each corridor indicator, the Recovery Plan would identify (1) measures of the indicator, (2) evaluations of the status of the indicator, (3) metrics for determining the status of the deterioration or improvement of the indicator, and (4)

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percent (50%) of the "General Business Risk Capital Requirement," which is calculated pursuant to the Capital Policy and is an amount sufficient to cover potential general business losses so that NSCC can continue operations and services as a going concern if those losses materialize, in compliance with Rule 17Ad-22(e)(15) under the Act. See also supra note 4; 17 CFR 240.17Ad-22(e)(15).

29 The Loss Allocation Filing proposes to amend Rule 4 to introduce the concept of an "Event Period" as the ten (10) Business Days beginning on (i) with respect to a Member default, the day on which NSCC notifies Members that it has ceased to act for a Member under the Rules, or (ii) with respect to a non-default loss, the day that NSCC notifies Members of the determination by the Board that there is a non-default loss event, as described in greater detail in that filing. The proposed Rule 4 would define a "round" as a series of loss allocations relating to an Event Period, and would provide that the first Loss Allocation Notice in a first, second, or subsequent round shall expressly state that such notice reflects the beginning of a first, second, or subsequent round. The maximum allocable loss amount of a round is equal to the sum of the "Loss Allocation Caps" (as defined in the proposed Rule 4) of those Members included in the round. See supra note 6.

"Corridor Actions," which are steps that may be taken to improve the status of the indicator,[30] as well as management escalations required to authorize those steps. Because NSCC has never experienced the default of multiple Members, it has not, historically, measured the deterioration or improvements metrics of the corridor indicators. As such, these metrics were chosen based on the business judgment of NSCC management.

The Recovery Plan would also describe the reporting and escalation of the status of the corridor indicators throughout the Recovery Corridor. Significant deterioration of a corridor indicator, as measured by the metrics set out in the Recovery Plan, would be escalated to the Board. NSCC management would review the corridor indicators and the related metrics at least annually, and would modify these metrics as necessary in light of observations from simulations of Member defaults and other analyses. Any proposed modifications would be reviewed by the Management Risk Committee and the Board Risk Committee. The Recovery Plan would estimate that NSCC may remain in the Recovery Corridor between one day and two weeks. This estimate is based on historical data observed in past Member defaults, the results of simulations of Member defaults, and periodic liquidity analyses conducted by NSCC. The actual length of a Recovery Corridor would vary based on actual market conditions observed at the time, and NSCC would expect the Recovery Corridor to be shorter in market conditions of increased stress.

The Recovery Plan would outline steps by which NSCC may allocate its losses, which would occur when and in the order provided in Rule 4, as amended.[31] The Recovery Plan would also identify tools that may be used to address foreseeable shortfalls of NSCC's liquidity resources following a Member default, and would provide that these tools may be used as appropriate during the Crisis Continuum to address liquidity shortfalls if they arise. The goal in managing NSCC's qualified liquidity resources is to maximize resource availability in an evolving stress situation, to maintain flexibility in the order and use of sources of liquidity, and to repay any third party lenders of liquidity in a timely manner. These liquidity tools include, for example, NSCC's committed 364-day credit facility,[32] and the issuance and private placement of additional short-term promissory notes ("commercial paper") and extendible notes, the cash proceeds of which provide NSCC with prefunded liquidity.[33] Additional voluntary or

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30 The Corridor Actions that would be identified in the Plan are indicative, but not prescriptive; therefore, if NSCC needs to consider alternative actions due to the applicable facts and circumstances, the escalation of those alternative actions would follow the same escalation protocol identified in the Plan for the Corridor Indicator to which the action relates.

31 As these matters are described in greater detail in the Loss Allocation Filing and in the proposed amendments to Rule 4, described therein, reference is made to that filing and the details are not repeated here. See supra note 6.

32 See Securities Exchange Act Release No. 80605 (May 5, 2017), 82 FR 21850 (May 10, 2017) (SR-DTC-2017-802, SR-NSCC-2017-802).

33 See Securities Exchange Act Release No. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015) (SR-NSCC-2015-802).

uncommitted tools to address potential liquidity shortfalls, for example uncommitted bank loans, which may supplement NSCC's other liquid resources described herein, would also be identified in the Recovery Plan. The Recovery Plan would state that, due to the extreme nature of a stress event that would cause NSCC to consider the use of these liquidity tools, the availability and capacity of these liquidity tools, and the willingness of counterparties to lend, cannot be accurately predicted and are dependent on the circumstances of the applicable stress period, including market price volatility, actual or perceived disruptions in financial markets, the costs to NSCC of utilizing these tools, and any potential impact on NSCC's credit rating.

As stated above, the Recovery Plan would state that NSCC will have entered the recovery phase on the date that it issues the first Loss Allocation Notice of the second loss allocation round with respect to a given Event Period. The Recovery Plan would provide that, during the recovery phase, NSCC would continue and, as needed, enhance, the monitoring and remedial actions already described in connection with previous phases of the Crisis Continuum, and would remain in the recovery phase until its financial resources are expected to be or are fully replenished, or until the Wind-down Plan is triggered, as described below.

The Recovery Plan would describe governance for the actions and tools that may be employed within each phase of the Crisis Continuum, which would be dictated by the facts and circumstances applicable to the situation being addressed. Such facts and circumstances would be measured by the various indicators and metrics applicable to that phase of the Crisis Continuum, and would follow the relevant escalation protocols that would be described in the Recovery Plan. The Recovery Plan would also describe the governance procedures around a decision to cease to act for a Member, pursuant to the Rules, and around the management and oversight of the subsequent liquidation of the Defaulting Member's portfolio. The Recovery Plan would state that, overall, NSCC would retain flexibility in accordance with the Rules, its governance structure, and its regulatory oversight, to address a particular situation in order to best protect NSCC and the Members, and to meet the primary objectives, throughout the Crisis Continuum, of minimizing losses and, where consistent and practicable, minimizing disturbance to affected markets.

*Non-Default Losses.* The Recovery Plan would outline how NSCC may address losses that result from events other than a Member default. While these matters are addressed in greater detail in other documents, this section of the Plan would provide a roadmap to those documents and an outline for NSCC's approach to monitoring and managing losses that could result from a non-default event. The Plan would first identify some of the risks NSCC faces that could lead to these losses, which include, for example, the business and profit/loss risks of unexpected declines in revenue or growth of expenses; the operational risks of disruptions to systems or processes that could lead to large losses, including those resulting from, for example, a cyber-attack; and custody or investment risks that could lead to financial losses. The Recovery Plan would describe NSCC's overall strategy for the management of these risks, which includes a "three lines of defense" approach to risk management that allows for comprehensive management of risk across the organization.[34] The Recovery Plan would also describe NSCC's

[34] This "three lines of defense" approach to risk management includes (1) a first line of defense comprised of the various business lines and functional units that support the products and services offered by NSCC; (2) a second line of defense comprised of control

approach to financial risk and capital management. The Plan would identify key aspects of this approach, including, for example, an annual budget process, business line performance reviews with management, and regular review of capital requirements against LNA. These risk management strategies are collectively intended to allow NSCC to effectively identify, monitor, and manage risks of non-default losses.

The Plan would identify the two categories of financial resources NSCC maintains to cover losses and expenses arising from non-default risks or events as (1) LNA, maintained, monitored, and managed pursuant to the Capital Policy, which include (a) amounts held in satisfaction of the General Business Risk Capital Requirement,[35] (b) the Corporate Contribution,[36] and (c) other amounts held in excess of NSCC's capital requirements pursuant to the Capital Policy; and (2) resources available pursuant to the loss allocation provisions of Rule 4.[37]

The Plan would address the process by which the CFO and the DTCC Treasury group would determine which available LNA resources are most appropriate to cover a loss that is caused by a non-default event. This determination involves an evaluation of a number of factors, including the current and expected size of the loss, the expected time horizon over when the loss or additional expenses would materialize, the current and projected available LNA, and the likelihood LNA could be successfully replenished pursuant to the Replenishment Plan, if triggered.[38] Finally the Plan would discuss how NSCC would apply its resources to address losses resulting from a non-default event, including the order of resources it would apply if the

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functions that support NSCC, including the risk management, legal and compliance areas; and (3) a third line of defense, which is performed by an internal audit group. The Clearing Agency Risk Management Framework includes a description of this "three lines of defense" approach to risk management, and addresses how NSCC comprehensively manages various risks, including operational, general business, investment, custody, and other risks that arise in or are borne by it. See Securities Exchange Act Release No. 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (SR-DTC-2017-013, SR-FICC-2017-016, SR-NSCC-2017-012). The Clearing Agency Operational Risk Management Framework describes the manner in which NSCC manages operational risks, as defined therein. See Securities Exchange Act Release No. 81745 (September 28, 2017), 82 FR 46332 (October 4, 2017) (SR-DTC-2017-014, SR-FICC-2017-017, SR-NSCC-2017-013).

35 See supra note 28.

36 See supra note 28.

37 See supra note 6.

38 See supra note 4.

loss or liability exceeds NSCC's excess LNA amounts, or is large relative thereto, and the Board has declared the event a "Declared Non-Default Loss Event" pursuant to Rule 4.[39]

The Plan would also describe proposed Rule 60 (Market Disruption and Force Majeure), which NSCC is proposing to adopt in the Rules. This Proposed Rule would provide transparency around how NSCC would address extraordinary events that may occur outside its control. Specifically, the Proposed Rule would define a "Market Disruption Event" and the governance around a determination that such an event has occurred. The Proposed Rule would also describe NSCC's authority to take actions during the pendency of a Market Disruption Event that it deems appropriate to address such an event and facilitate the continuation of its services, if practicable, as described in greater detail below.

The Plan would describe the interaction between the Proposed Rule and NSCC's existing processes and procedures addressing business continuity management and disaster recovery (generally, the "BCM/DR procedures"), making clear that the Proposed Rule is designed to support those BCM/DR procedures and to address circumstances that may be exogenous to NSCC and not necessarily addressed by the BCM/DR procedures. Finally, the Plan would describe that, because the operation of the Proposed Rule is specific to each applicable Market Disruption Event, the Proposed Rule does not define a time limit on its application. However, the Plan would note that actions authorized by the Proposed Rule would be limited to the pendency of the applicable Market Disruption Event, as made clear in the Proposed Rule. Overall, the Proposed Rule is designed to mitigate risks caused by Market Disruption Events and, thereby, minimize the risk of financial loss that may result from such events.

*Recovery Tool Characteristics.* The Recovery Plan would describe NSCC's evaluation of the tools identified within the Recovery Plan, and its rationale for concluding that such tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to Members and minimize negative impact on Members and the financial system, in compliance with guidance published by the Commission in connection with the adoption of Rule 17Ad-22(e)(3)(ii) under the Act.[40] NSCC's analysis and the conclusions set forth in this section of the Recovery Plan are described in greater detail in Item 3(b) of this filing, below.

NSCC Wind-down Plan

The Wind-down Plan would provide the framework and strategy for the orderly wind-down of NSCC if the use of the recovery tools described in the Recovery Plan do not successfully return NSCC to financial viability. While NSCC believes that, given the comprehensive nature of the recovery tools, such event is extremely unlikely, as described in greater detail below, NSCC is proposing a wind-down strategy that provides for (1) the transfer of NSCC's business, assets and membership to another legal entity, (2) such transfer being effected in connection with proceedings under Chapter 11 of the U.S. Federal Bankruptcy

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39 See supra note 6.

40 Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14).

Code,[41] and (3) after effectuating this transfer, NSCC liquidating any remaining assets in an orderly manner in bankruptcy proceedings. NSCC believes that the proposed transfer approach to a wind-down would meet its objectives of (1) assuring that NSCC's critical services will be available to the market as long as there are Members in good standing, and (2) minimizing disruption to the operations of Members and financial markets generally that might be caused by NSCC's failure.

In describing the transfer approach to NSCC's Wind-down Plan, the Plan would identify the factors that NSCC considered in developing this approach, including the fact that NSCC does not own material assets that are unrelated to its clearance and settlement activities. As such, a business reorganization or "bail-in" of debt approach would be unlikely to mitigate significant losses. Additionally, NSCC's approach was developed in consideration of its critical and unique position in the U.S. markets, which precludes any approach that would cause NSCC's critical services to no longer be available.

First, the Wind-down Plan would describe the potential scenarios that could lead to the wind-down of NSCC, and the likelihood of such scenarios. The Wind-down Plan would identify the time period leading up to a decision to wind-down NSCC as the "Runway Period." This period would follow the implementation of any recovery tools, as it may take a period of time, depending on the severity of the market stress at that time, for these tools to be effective or for NSCC to realize a loss sufficient to cause it to be unable to effectuate settlements and repay its obligations.[42] The Wind-down Plan would identify some of the indicators that it has entered this Runway Period, which would include, for example, successive Member defaults, significant Member retirements thereafter, and NSCC's inability to replenish its financial resources following the liquidation of the portfolio of the Defaulting Member(s).

The trigger for implementing the Wind-down Plan would be a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning NSCC to viability as a going concern. As described in the Plan, NSCC believes this is an appropriate trigger because it is both broad and flexible enough to cover a variety of scenarios, and would align incentives of NSCC and the Members to avoid actions that might undermine NSCC's recovery efforts. Additionally, this approach takes into account the characteristics of NSCC's recovery tools and enables the Board to consider (1) the presence of indicators of a successful or unsuccessful recovery, and (2) potential for knock-on effects of continued iterative application of NSCC's recovery tools.

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[41] 11 U.S.C. 1101 et seq.

[42] The Wind-down Plan would state that, given NSCC's position as a user-governed financial market utility, it is possible that Members might voluntarily elect to provide additional support during the recovery phase leading up to a potential trigger of the Wind-down Plan, but would also make clear that NSCC cannot predict the willingness of Members to do so.

The Wind-down Plan would describe the general objectives of the transfer strategy, and would address assumptions regarding the transfer of NSCC's critical services, business, assets and membership, and the assignment of NSCC's links with other FMIs, to another legal entity that is legally, financially, and operationally able to provide NSCC's critical services to entities that wish to continue their membership following the transfer ("Transferee"). The Wind-down Plan would provide that the Transferee would be either (1) a third party legal entity, which may be an existing or newly established legal entity or a bridge entity formed to operate the business on an interim basis to enable the business to be transferred subsequently ("Third Party Transferee"); or (2) an existing, debt-free failover legal entity established ex-ante by DTCC ("Failover Transferee") to be used as an alternative Transferee in the event that no viable or preferable Third Party Transferee timely commits to acquire NSCC's business. NSCC would seek to identify the proposed Transferee, and negotiate and enter into transfer arrangements during the Runway Period and prior to making any filings under Chapter 11 of the U.S. Federal Bankruptcy Code.[43] As stated above, the Wind-down Plan would anticipate that the transfer to the Transferee be effected in connection with proceedings under Chapter 11 of the U.S. Federal Bankruptcy Code, and pursuant to a bankruptcy court order under Section 363 of the Bankruptcy Code, such that the transfer would be free and clear of claims against, and interests in, NSCC, except to the extent expressly provided in the court's order.[44]

In order to effect a timely transfer of its services and minimize the market and operational disruption of such transfer, NSCC would expect to transfer all of its critical services and any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership. Following the transfer, the Wind-down Plan would anticipate that the Transferee and its continuing membership would determine whether to continue to provide any transferred non-critical service on an ongoing basis, or terminate the non-critical service following some transition period. NSCC's Wind-down Plan would anticipate that the Transferee would enter into a transition services agreement with DTCC so that DTCC would continue to provide the shared services it currently provides to NSCC, including staffing, infrastructure and operational support. The Wind-down Plan would also anticipate the assignment of NSCC's link arrangements, including those with DTC, CDS and OCC, described above, to the Transferee.[45] The Wind-down Plan would provide that Members' open positions existing prior to the effective time of the transfer would be addressed by the provisions of the proposed Wind-down Rule and Corporation Default Rule, as defined and described below, and that the Transferee would not acquire any pending or open transactions

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43 See 11 U.S.C. 1101 et seq.

44 See id. at 363.

45 The proposed transfer arrangements outlined in the Wind-down Plan do not contemplate the transfer of any credit or funding agreements, which are generally not assignable by NSCC. However, to the extent the Transferee adopts rules substantially identical to those NSCC has in effect prior to the transfer, it would have the benefit of any rules-based liquidity funding. The Wind-down Plan contemplates that no Clearing Fund would be transferred to the Transferee, as it is not held in a bankruptcy remote manner and it is the primary prefunded liquidity resource to be accessed in the recovery phase.

with the transfer of the business. The Wind-down Plan would anticipate that the Transferee would accept transactions for processing with a trade date from and after the effective time of the transfer.

The Wind-down Plan would provide that, following the effectiveness of the transfer to the Transferee, the wind-down of NSCC would involve addressing any residual claims against NSCC through the bankruptcy process and liquidating the legal entity. As such, and as stated above, the Wind-down Plan does not contemplate NSCC continuing to provide services in any capacity following the transfer time, and any services not transferred would be terminated.

The Wind-down Plan would also identify the key dependencies for the effectiveness of the transfer, which include regulatory approvals that would permit the Transferee to be legally qualified to provide the transferred services from and after the transfer, and approval by the applicable bankruptcy court of, among other things, the proposed sale, assignments, and transfers to the Transferee.

The Wind-down Plan would address governance matters related to the execution of the transfer of NSCC's business and its wind-down. The Wind-down Plan would address the duties of the Board to execute the wind-down of NSCC in conformity with (1) the Rules, (2) the Board's fiduciary duties, which mandate that it exercise reasonable business judgment in performing these duties, and (3) NSCC's regulatory obligations under the Act as a registered clearing agency. The Wind-down Plan would also identify certain factors the Board may consider in making these decisions, which would include, for example, whether NSCC could safely stabilize the business and protect its value without seeking bankruptcy protection, and NSCC's ability to continue to meet its regulatory requirements.

The Wind-down Plan would describe (1) actions NSCC or DTCC may take to prepare for wind-down in the period before NSCC experiences any financial distress, (2) actions NSCC would take both during the recovery phase and the Runway Period to prepare for the execution of the Wind-down Plan, and (3) actions NSCC would take upon commencement of bankruptcy proceedings to effectuate the Wind-down Plan.

Finally, the Wind-down Plan would include an analysis of the estimated time and costs to effectuate the plan, and would provide that this estimate be reviewed and approved by the Board annually. In order to estimate the length of time it might take to achieve a recovery or orderly wind-down of NSCC's critical operations, as contemplated by the R&W Plan, the Wind-down Plan would include an analysis of the possible sequencing and length of time it might take to complete an orderly wind-down and transfer of critical operations, as described in earlier sections of the R&W Plan. The Wind-down Plan would also include in this analysis consideration of other factors, including the time it might take to complete any further attempts at recovery under the Recovery Plan. The Wind-down Plan would then multiply this estimated length of time by NSCC's average monthly operating expenses, including adjustments to account for changes to NSCC's profit and expense profile during these circumstances, over the previous twelve months to determine the amount of LNA that it should hold to achieve a recovery or orderly wind-down of NSCC's critical operations. The estimated wind-down costs would

constitute the "Recovery/Wind-down Capital Requirement" under the Capital Policy.[46] Under that policy, the General Business Risk Capital Requirement is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement.[47]

The R&W Plan is designed as a roadmap, and the types of actions that may be taken both leading up to and in connection with implementation of the Wind-down Plan would be primarily addressed in other supporting documentation referred to therein.

The Wind-down Plan would address proposed Rule 41 (Corporation Default) and proposed Rule 42 (Wind-down of the Corporation), which would be adopted to facilitate the implementation of the Wind-down Plan, and are discussed below.

***Proposed Rules***

In connection with the adoption of the R&W Plan, NSCC is proposing to adopt the Proposed Rules, each described below. The Proposed Rules would facilitate the execution of the R&W Plan and would provide Members and Limited Members with transparency as to critical aspects of the Plan, particularly as they relate to the rights and responsibilities of both NSCC and Members. The Proposed Rules also provide a legal basis to these aspects of the Plan.

Rule 41 (Corporation Default)

The proposed Rule 41 ("Corporation Default Rule") would provide a mechanism for the termination, valuation and netting of unsettled, guaranteed CNS transactions in the event NSCC is unable to perform its obligations or otherwise suffers a defined event of default, such as entering insolvency proceedings. The proposed Corporation Default Rule would provide Members with transparency and certainty regarding what would happen if NSCC were to fail (defined in the proposed Rule as a "Corporation Default").

The proposed rule would define the events that would constitute a Corporation Default, which would generally include (1) the failure of NSCC to make any undisputed payment or delivery to a Member if such failure is not remedied within seven days after notice of such failure is given to NSCC; (2) NSCC is dissolved; (3) NSCC institutes a proceeding seeking a judgment of insolvency or bankruptcy, or a proceeding is instituted against it seeking a judgment of bankruptcy or insolvency and such judgment is entered; or (4) NSCC seeks or becomes subject to the appointment of a receiver, trustee or similar official pursuant to the federal securities laws or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act[48] for it or for all or substantially all of its assets.

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46 See supra note 4.

47 See supra note 4.

48 12 U.S.C. 5381-5394.

Upon a Corporation Default, the proposed Corporation Default Rule would provide that all unsettled, guaranteed CNS transactions would be terminated and, no later than forty-five days from the date on which the event that constitutes a Corporation Default occurred (or "Default Date"), the Board would determine a single net amount owed by or to each Member with respect to such transactions pursuant to the valuation procedures set forth in the Proposed Rule. Essentially, for each affected position in a CNS Security, the "CNS Market Value" would be determined by using the Current Market Price for that security as determined in the CNS System as of the close of business on the next Business Day following the Default Date. NSCC would determine a "Net Contract Value" for each Member's net unsettled long or short position in a CNS Security by netting the Member's (i) contract price for such net position that, as of the Default Date, has not yet passed the Settlement Date, and (ii) the Current Market Price in the CNS System on the Default Date for its fail positions. To determine each Member's "CNS Close-out Value," (i) the Net Contract Value for each CUSIP would be subtracted from the CNS Market Value for such CUSIP, and (ii) the resulting difference for all CUSIPS in which the Member had a net long or short position would be summed, and would be netted and offset against any other amounts that may be due to or owing from the Member under the Rules. The proposed Corporation Default Rule would provide for notification to each Member of its CNS Close-out Value, and would also address interpretation of the Rules in relation to certain terms that are defined in the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA").[49]

NSCC believes this valuation approach, which is comparable to the approach adopted by other central counterparties, is appropriate for NSCC given the market in which NSCC operates and the volumes of transactions it processes in CNS, because it would provide for a common, clear and transparent valuation methodology and price per CUSIP applicable to all affected Members.

Rule 42 (Wind-down of the Corporation)

The proposed Rule 42 ("Wind-down Rule") would be adopted to facilitate the execution of the Wind-down Plan. The Wind-down Rule would include a proposed set of defined terms that would be applicable only to the provisions of this Proposed Rule. The Wind-down Rule would make clear that a wind-down of NSCC's business would occur (1) after a decision is made by the Board, and (2) in connection with the transfer of NSCC's services to a Transferee, as described therein. Generally, the proposed Wind-down Rule is designed to create clear mechanisms for the transfer of Eligible Members, Eligible Limited Members, and Settling Banks (as these terms would be defined in the Wind-down Rule), and NSCC's business, in order to provide for continued access to critical services and to minimize disruption to the markets in the event the Wind-down Plan is initiated.

*Wind-down Trigger.* First, the Proposed Rule would make clear that the Board is responsible for initiating the Wind-down Plan, and would identify the criteria the Board would consider when making this determination. As provided for in the Wind-down Plan and in the proposed Wind-down Rule, the Board would initiate the Plan if, in the exercise of its business

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[49] 12 U.S.C. 1811 et seq.

judgment and subject to its fiduciary duties, it has determined that the execution of the Recovery Plan has not or is not likely to restore NSCC to viability as a going concern, and the implementation of the Wind-down Plan, including the transfer of NSCC's business, is in the best interests of NSCC, Members and Limited Members, its shareholders and creditors, and the U.S. financial markets.

*Identification of Critical Services; Designation of Dates and Times for Specific Actions.* The Proposed Rule would provide that, upon making a determination to initiate the Wind-down Plan, the Board would identify the critical and non-critical services that would be transferred to the Transferee at the Transfer Time (as defined below and in the Proposed Rule), as well as any non-critical services that would not be transferred to the Transferee. The proposed Wind-down Rule would establish that any services transferred to the Transferee will only be provided by the Transferee as of the Transfer Time, and that any non-critical services that are not transferred to the Transferee would be terminated at the Transfer Time. The Proposed Rule would also provide that the Board would establish (1) an effective time for the transfer of NSCC's business to a Transferee ("Transfer Time"), (2) the last day that transactions may be submitted to NSCC for processing ("Last Transaction Acceptance Date"), and (3) the last day that transactions submitted to NSCC will be settled ("Last Settlement Date").

*Treatment of Pending Transactions.* The Wind-down Rule would also authorize the Board to provide for the settlement of pending transactions prior to the Transfer Time, so long as the Corporation Default Rule has not been triggered. For example, the Proposed Rule would provide the Board with the ability to, if it deems practicable, based on NSCC's resources at that time, allow pending transactions to complete prior to the transfer of NSCC's business to a Transferee. The Board would also have the ability to allow Members to only submit trades that would effectively offset pending positions or provide that transactions will be processed in accordance with special or exception processing procedures. The Proposed Rule is designed to enable these actions in order to facilitate settlement of pending transactions and reduce claims against NSCC that would have to be satisfied after the transfer has been effected. If none of these actions are deemed practicable (or if the Corporation Default Rule has been triggered), then the provisions of the proposed Corporation Default Rule would apply to the treatment of open, pending transactions.

The Proposed Rule would make clear, however, that NSCC would not accept any transactions for processing after the Last Transaction Acceptance Date or which are designated to settle after the Last Settlement Date. Any transactions to be processed and/or settled after the Transfer Time would be required to be submitted to the Transferee, and would not be NSCC's responsibility.

*Notice Provisions.* The proposed Wind-down Rule would provide that, upon a decision to implement the Wind-down Plan, NSCC would provide Members and Limited Members and its regulators with a notice that includes material information relating to the Wind-down Plan and the anticipated transfer of NSCC's membership and business, including, for example, (1) a brief statement of the reasons for the decision to implement the Wind-down Plan; (2) identification of the Transferee and information regarding the transaction by which the transfer of NSCC's business would be effected; (3) the Transfer Time, Last Transaction Acceptance Date, and Last Settlement Date; and (4) identification of Eligible Members and Eligible Limited Members, and

the critical and non-critical services that would be transferred to the Transferee at the Transfer Time, as well as those Non-Eligible Members and Non-Eligible Limited Members (as defined in the Proposed Rule), and any non-critical services that would not be included in the transfer. NSCC would also make available the rules and procedures and membership agreements of the Transferee.

*Transfer of Membership.* The proposed Wind-down Rule would address the expected transfer of NSCC's membership to the Transferee, which NSCC would seek to effectuate by entering into an arrangement with a Failover Transferee, or by using commercially reasonable efforts to enter into such an arrangement with a Third Party Transferee. Therefore, the Wind-down Rule would provide Members, Limited Members and Settling Banks with notice that, in connection with the implementation of the Wind-down Plan and with no further action required by any party, (1) their membership with NSCC would transfer to the Transferee, (2) they would become party to a membership agreement with such Transferee, and (3) they would have all of the rights and be subject to all of the obligations applicable to their membership status under the rules of the Transferee. These provisions would not apply to any Member or Limited Member that is either in default of an obligation to NSCC or has provided notice of its election to withdraw from membership. Further, the proposed Wind-down Rule would make clear that it would not prohibit (1) Members and Limited Members that are not transferred by operation of the Wind-down Rule from applying for membership with the Transferee, or (2) Members, Limited Members, and Settling Banks that would be transferred to the Transferee from withdrawing from membership with the Transferee.[50]

*Comparability Period.* The proposed automatic mechanism for the transfer of NSCC's membership is intended to provide NSCC's membership with continuous access to critical services in the event of NSCC's wind-down, and to facilitate the continued prompt and accurate clearance and settlement of securities transactions. Further to this goal, the proposed Wind-down Rule would provide that NSCC would enter into arrangements with a Failover Transferee, or would use commercially reasonable efforts to enter into arrangements with a Third Party Transferee, providing that, in either case, with respect to the critical services and any non-critical services that are transferred from NSCC to the Transferee, for at least a period of time to be agreed upon ("Comparability Period"), the business transferred from NSCC to the Transferee would be operated in a manner that is comparable to the manner in which the business was previously operated by NSCC. Specifically, the proposed Wind-down Rule would provide that: (1) the rules of the Transferee and terms of membership agreements would be comparable in substance and effect to the analogous Rules and membership agreements of NSCC; (2) the rights and obligations of any Members, Limited Members and Settling Banks that are transferred to the Transferee would be comparable in substance and effect to their rights and obligations as to NSCC; and (3) the Transferee would operate the transferred business and provide any services that are transferred in a comparable manner to which such services were provided by NSCC. The purpose of these provisions and the intended effect of the proposed Wind-down Rule is to

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[50] The Members and Limited Members whose membership is transferred to the Transferee pursuant to the proposed Wind-down Rule would submit transactions to be processed and settled subject to the rules and procedures of the Transferee, including any applicable margin charges or other financial obligations.

facilitate a smooth transition of NSCC's business to a Transferee and to provide that, for at least the Comparability Period, the Transferee (1) would operate the transferred business in a manner that is comparable in substance and effect to the manner in which the business was operated by NSCC, and (2) would not require sudden and disruptive changes in the systems, operations and business practices of the new members of the Transferee.

*Subordination of Claims Provisions and Miscellaneous Matters*. The proposed Wind-down Rule would also include a provision addressing the subordination of unsecured claims against NSCC of Members and Limited Members who fail to participate in NSCC's recovery efforts (*i.e.,* such firms are delinquent in their obligations to NSCC or elect to retire from NSCC in order to minimize their obligations with respect to the allocation of losses, pursuant to the Rules). This provision is designed to incentivize Members to participate in NSCC's recovery efforts.[51]

The proposed Wind-down Rule would address other ex-ante matters including provisions providing that Members, Limited Members and Settling Banks (1) will assist and cooperate with NSCC to effectuate the transfer of NSCC's business to a Transferee, (2) consent to the provisions of the rule, and (3) grant NSCC power of attorney to execute and deliver on their behalf documents and instruments that may be requested by the Transferee. Finally, the Proposed Rule would include a limitation of liability for any actions taken or omitted to be taken by NSCC pursuant to the Proposed Rule. The purpose of the limitation of liability is to facilitate and protect NSCC's ability to act expeditiously in response to extraordinary events. As noted, such limitation of liability would be available only following triggering of the Wind-down Plan. In addition, and as a separate matter, the limitation of liability provides Members with transparency for the unlikely situation when those extraordinary events could occur, as well supporting the legal framework within which NSCC would take such actions. These provisions, collectively, are designed to enable NSCC to take such acts as the Board determines necessary to effectuate an orderly transfer and wind-down of its business should recovery efforts prove unsuccessful.

Rule 60 (Market Disruption and Force Majeure)

The proposed Rule 60 ("Force Majeure Rule") would address NSCC's authority to take certain actions upon the occurrence, and during the pendency, of a "Market Disruption Event," as defined therein. The Proposed Rule is designed to clarify NSCC's ability to take actions to address extraordinary events outside of the control of NSCC and of its membership, and to mitigate the effect of such events by facilitating the continuity of services (or, if deemed necessary, the temporary suspension of services). To that end, under the proposed Force Majeure Rule, NSCC would be entitled, during the pendency of a Market Disruption Event, to

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[51] Nothing in the proposed Wind-down Rule would seek to prevent a Member, Limited Member or Settling Bank that retired its membership at NSCC from applying for membership with the Transferee. Once its NSCC membership is terminated, however, such firm would not be able to benefit from the membership assignment that would be effected by this proposed Wind-down Rule, and it would have to apply for membership directly with the Transferee, subject to its membership application and review process.

(1) suspend the provision of any or all services, and (2) take, or refrain from taking, or require Members and Limited Members to take, or refrain from taking, any actions it considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of NSCC's services as may be practicable.

The proposed Force Majeure Rule would identify the events or circumstances that would be considered a "Market Disruption Event," including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which NSCC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems. The proposed Force Majeure Rule would define the governance procedures for how NSCC would determine whether, and how, to implement the provisions of the rule. A determination that a Market Disruption Event has occurred would generally be made by the Board, but the Proposed Rule would provide for limited, interim delegation of authority to a specified officer or management committee if the Board would not be able to take timely action. In the event such delegated authority is exercised, the proposed Force Majeure Rule would require that the Board be convened as promptly as practicable, no later than five Business Days after such determination has been made, to ratify, modify, or rescind the action. The proposed Force Majeure Rule would also provide for prompt notification to the Commission, and advance consultation with Commission staff, when practicable, including notification when an event is no longer continuing and the relevant actions are terminated. The Proposed Rule would require Members and Limited Members to notify NSCC immediately upon becoming aware of a Market Disruption Event, and, likewise, would require NSCC to notify Members and Limited Members if it has triggered the Proposed Rule and of actions taken or intended to be taken thereunder.

Finally, the Proposed Rule would address other related matters, including a limitation of liability for any failure or delay in performance, in whole or in part, arising out of the Market Disruption Event. The purpose of the limitation of liability would be similar to the purpose of the analogous provision in the proposed Wind-down Rule, which is to facilitate and protect NSCC's ability to act expeditiously in response to extraordinary events.

Proposed Change to the Rule Numbers

In order to align the order of the Proposed Rules with the order of comparable rules in the rulebooks of the other Clearing Agencies, NSCC is also proposing to re-number the current Rule 42 (Wind-down of a Member, Fund Member or Insurance Carrier/Retirement Services Member) to Rule 40, which is currently reserved for future use, as shown on Exhibit 5b, hereto.

(b) Statutory Basis

NSCC believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes that the R&W Plan, each of the Proposed Rules, and the proposed change to Rule numbers are consistent with Section 17A(b)(3)(F) of the Act,[52] the R&W Plan and each of the

[52] 15 U.S.C. 78q-1(b)(3)(F).

Proposed Rules are consistent with Rule 17Ad-22(e)(3)(ii) under the Act,[53] and the R&W Plan is consistent with Rule 17Ad-22(e)(15)(ii) under the Act,[54] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of NSCC be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.[55] The Recovery Plan and the proposed Force Majeure Rule would promote the prompt and accurate clearance and settlement of securities transactions by providing NSCC with a roadmap for actions it may employ to mitigate losses, and monitor and, as needed, stabilize, its financial condition, which would allow it to continue its critical clearance and settlement services in stress situations. Further, as described above, the Recovery Plan is designed to identify the actions and tools NSCC may use to address and minimize losses to both NSCC and Members. The Recovery Plan and the proposed Force Majeure Rule would provide NSCC's management and the Board with guidance in this regard by identifying the indicators and governance around the use and application of such tools to enable them to address stress situations in a manner most appropriate for the circumstances. Therefore, the Recovery Plan and the proposed Force Majeure Rule would also contribute to the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible by enabling actions that would address and minimize losses.

The Wind-down Plan and the proposed Corporation Default Rule and Wind-down Rule, which would both facilitate the implementation of the Wind-down Plan, would also 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 NSCC or for which it is responsible. The Wind-down Plan and the proposed Corporation Default Rule and Wind-down Rule would collectively establish a framework for the transfer and orderly wind-down of NSCC's business. These proposals would establish clear mechanisms for the transfer of NSCC's critical services and membership, and for the treatment of open, guaranteed CNS transactions in the event of NSCC's default. By doing so, the Wind-down Plan and these Proposed Rules are designed to facilitate the continuity of NSCC's critical services and enable Members and Limited Members to maintain access to NSCC's services through the transfer of its membership in the event NSCC defaults or the Wind-down Plan is triggered by the Board. Therefore, by facilitating the continuity of NSCC's critical clearance and settlement services, NSCC believes the proposals would promote the prompt and accurate clearance and settlement of securities transactions. Further, by creating a framework for the transfer and orderly wind-down of NSCC's business, NSCC believes the proposals would enhance the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.

Finally, the proposed change to the Rule numbers would align the order of the Proposed Rules with the order of comparable rules in the rulebooks of the other Clearing Agencies.

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[53] 17 CFR 240.17Ad-22(e)(3)(ii).

[54] Id. at 240.17Ad-22(e)(15)(ii).

[55] 15 U.S.C. 78q-1(b)(3)(F).

Therefore, NSCC believes the proposed change would create ease of reference, particularly for Members that are also participants of the other Clearing Agencies, and, as such, would assist in promoting the prompt and accurate clearance and settlement of securities transactions.

Therefore, NSCC believes the R&W Plan, each of the Proposed Rules, and the proposed change to Rule numbers are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[56]

Rule 17Ad-22(e)(3)(ii) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[57] The R&W Plan and the Proposed Rules are designed to meet the requirements of Rule 17Ad-22(e)(3)(ii).[58]

The R&W Plan would be maintained by NSCC in compliance with Rule 17Ad-22(e)(3)(ii) in that it provides plans for the recovery and orderly wind-down of NSCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described above.[59] Specifically, the Recovery Plan would define the risk management activities, stress conditions and indicators, and tools that NSCC may use to address stress scenarios that could eventually prevent it from being able to provide its critical services as a going concern. Through the framework of the Crisis Continuum, the Recovery Plan would address measures that NSCC may take to address risks of credit losses and liquidity shortfalls, and other losses that could arise from a Member default. The Recovery Plan would also address the management of general business risks and other non-default risks that could lead to losses.

The Wind-down Plan would be triggered by a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning NSCC to viability as a going concern. Once triggered, the Wind-down Plan would set forth clear mechanisms for the transfer of NSCC's membership and business, and would be designed to facilitate continued access to NSCC's critical services and to minimize market impact of the transfer. By establishing the framework and strategy for the execution of the transfer and wind-down of NSCC in order to facilitate continuous access to NSCC's critical services, the Wind-down Plan establishes a plan for the orderly wind-down of NSCC. Therefore, NSCC believes the R&W Plan would provide plans for the recovery and orderly wind-down of the covered clearing agency necessitated by

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56 Id.

57 17 CFR 240.17Ad-22(e)(3)(ii).

58 Id.

59 Id.

credit losses, liquidity shortfalls, losses from general business risk, or any other losses, and, as such, meets the requirements of Rule 17Ad-22(e)(3)(ii).[60]

As described in greater detail above, the Proposed Rules are designed to facilitate the execution of the R&W Plan, provide Members and Limited Members with transparency regarding the material provisions of the Plan, and provide NSCC with a legal basis for implementation of those provisions. As such, NSCC also believes the Proposed Rules meet the requirements of Rule 17Ad-22(e)(3)(ii).[61]

NSCC has evaluated the recovery tools that would be identified in the Recovery Plan and has determined that these tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to NSCC's Members to manage the risks they present. The recovery tools, as outlined in the Recovery Plan and in the proposed Force Majeure Rule, provide NSCC with a comprehensive set of options to address its material risks and support the resiliency of its critical services under a range of stress scenarios. NSCC also believes the recovery tools are effective, as NSCC has both legal basis and operational capability to execute these tools in a timely and reliable manner. Many of the recovery tools are provided for in the Rules; Members are bound by the Rules through their membership agreements with NSCC, and the Rules are adopted pursuant to a framework established by Rule 19b-4 under the Act,[62] providing a legal basis for the recovery tools found therein. Other recovery tools have legal basis in contractual arrangements to which NSCC is a party, as described above. Further, as many of the tools are embedded in NSCC's ongoing risk management practices or are embedded into its predefined default-management procedures, NSCC is able to execute these tools, in most cases, when needed and without material operational or organizational delay.

The majority of the recovery tools are also transparent, as they are, or are proposed to be, included in the Rules, which are publicly available. NSCC believes the recovery tools also provide appropriate incentives to the Members, as they are designed to control the amount of risk they present to NSCC's clearance and settlement system. Members' financial obligations to NSCC, particularly their Required Deposits to the Clearing Fund, are measured by the risk posed by the Members' activity in NSCC's systems, which incentivizes them to manage that risk which would correspond to lower financial obligations. Finally, NSCC's Recovery Plan provides for a continuous evaluation of the systemic consequences of executing its recovery tools, with the goal of minimizing their negative impact. The Recovery Plan would outline various indicators over a timeline of increasing stress, the Crisis Continuum, with escalation triggers to NSCC management or the Board, as appropriate. This approach would allow for timely evaluation of the situation and the possible impacts of the use of a recovery tool in order to minimize the negative effects of the stress scenario. Therefore, NSCC believes that the recovery tools that would be identified and described in its Recovery Plan, including the authority provided to it in

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60 Id.

61 Id.

62 Id. at 240.19b-4.

the proposed Force Majeure Rule, would meet the criteria identified within guidance published by the Commission in connection with the adoption of Rule 17Ad-22(e)(3)(ii).[63]

Therefore, NSCC believes the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad-22(e)(3)(ii).[64]

Rule 17Ad-22(e)(15)(ii) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient LNA to cover potential general business losses so that NSCC can continue operations and services as a going concern if those losses materialize, including by holding LNA equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency.[65] While the Capital Policy addresses how NSCC holds LNA in compliance with these requirements, the Wind-down Plan would include an analysis that would estimate the amount of time and the costs to achieve a recovery or orderly wind-down of NSCC's critical operations and services, and would provide that the Board review and approve this analysis and estimation annually. The Wind-down Plan would also provide that the estimate would be the "Recovery/Wind-down Capital Requirement" under the Capital Policy. Under that policy, the General Business Risk Capital Requirement, which is the sufficient amount of LNA that NSCC should hold to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize, is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement. Therefore, NSCC believes the R&W Plan, as it interrelates with the Capital Policy, is consistent with Rule 17Ad-22(e)(15)(ii).[66]

**4. Self-Regulatory Organization's Statement on Burden on Competition**

NSCC does not believe the proposal would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act.[67] The proposal would apply uniformly to all Members and Limited Members. NSCC does not anticipate that the proposal would affect its day-to-day operations under normal circumstances, or in the management of a typical Member default scenario or non-default event. NSCC is not proposing to alter the standards or requirements for becoming or remaining a Member, or otherwise using its services. NSCC also does not propose to change its methodology for calculation of margin or Clearing Fund contributions. The proposal is intended to (1) address the

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63 Supra note 40.

64 17 CFR 240.17Ad-22(e)(3)(ii).

65 Id. at 240.17Ad-22(e)(15)(ii).

66 Id.

67 15 U.S.C. 78q-1(b)(3)(I).

risk of loss events and identify the tools and resources available to it to withstand and recover from such events, so that it can restore normal operations, and (2) provide a framework for its orderly wind-down and the transfer of its business in the event those recovery tools do not restore NSCC to financial viability, as described herein.

The R&W Plan and each of the Proposed Rules have been developed and documented in order to satisfy applicable regulatory requirements, as discussed above.

With respect to the Recovery Plan, the proposal generally reflects NSCC's existing tools and existing internal procedures. Existing tools that would have a direct impact on the rights, responsibilities or obligations of Members are reflected in the existing Rules or are proposed to be included in the Rules. Accordingly, the Recovery Plan and the proposed Force Majeure Rule are intended to provide a roadmap, define the strategy and identify the tools available to NSCC in connection with its recovery efforts. By proposing to enhance NSCC's existing internal management and its regulatory compliance related to its recovery efforts, NSCC does not believe the Recovery Plan or the proposed Force Majeure Rule would have any impact, or impose any burden, on competition.

With respect to the Wind-down Plan, the proposed Corporation Default Rule, and the proposed Wind-down Rule, which facilitate the execution of the Wind-down Plan, the proposal would operate to effect the transfer of all eligible Members and Limited Members to the Transferee, and would not prohibit any market participant from either bidding to become the Transferee or from applying for membership with the Transferee. The proposal also would not prohibit any Member or Limited Member from withdrawing from NSCC prior to the Transfer Time, as is permitted under the Rules today, or from applying for membership with the Transferee. Therefore, as the proposal would treat each similarly situated Member identically under the Wind-down Plan and under these Proposed Rules, NSCC does not believe the Wind-down Plan, the proposed Corporation Default Rule, or the proposed Wind-down Rule would have any impact, or impose any burden, on competition.

NSCC does not believe that the proposed change to the Rule numbers would have any impact on competition because this proposed change is technical in nature and would not change NSCC's current practices or the rights or obligations of Members.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

While NSCC has not solicited or received any written comments relating to this proposal, NSCC has conducted outreach to Members in order to provide them with notice of the proposal. NSCC will notify the Commission of any written comments received by NSCC.

**6. Extension of Time Period for Commission Action**

NSCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act for Commission action.[68]

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act of 2010**

Not applicable.

**11. Exhibits**

Exhibit 1 Not applicable.

Exhibit 1A Notice of proposal for publication in the Federal Register.

Exhibit 2 Not applicable.

Exhibit 3 Not applicable.

Exhibit 4 R&W Plan (marked). **Omitted and filed separately with the Commission. Confidential treatment of this Exhibit 4 pursuant to 17 CFR 240.24b-2 being requested.**

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[68] 15 U.S.C. 78s(b)(2).

Exhibit 5a R&W Plan (revised). **Omitted and filed separately with the Commission. Confidential treatment of this Exhibit 5a pursuant to 17 CFR 240.24b-2 being requested.**

Exhibit 5b Proposed changes to the Rules.

**SR-NSCC-2017-017 Amendment No. 1**
**EXHIBIT 1A**

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-NSCC-2017-017)

[DATE]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Amendment No. 1 to Proposed Rule Change to Adopt the Recovery & Wind-down Plan and Related Rules

On December 18, 2017, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to adopt the Recovery & Wind-down Plan and related rules (SR-NSCC-2017-017) ("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 in the Federal Register on January 8, 2018.[3] On February 8, 2018, the Commission

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

2 17 CFR 240.19b-4. On December 18, 2017, NSCC filed this proposal as an advance notice (SR-NSCC-2017-805) with the Commission pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act") and Rule 19b-4(n)(1)(i) of the Act ("Advance Notice"). On January 30, 2018, the Commission published in the Federal Register notices of filing of the Advance Notice. These notices also extended the review period for the Advance Notice pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act. (12 U.S.C. 5465(e)(1)(H).) See Securities Exchange Act Release No. 82581 (January 24, 2018), 83 FR 4327 (January 30, 2018) (SR-NSCC-2017-805). On April 10, 2018, the Commission required further information for consideration of the Advance Notice, pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, which provided the Commission with a renewed 60-day review period beginning on the date that the information requested is received by the Commission. (12 U.S.C. 5465(e)(1)(D).) As of the date of this release, the Commission has not yet received the requested information.

3 Securities Exchange Act Release No. 82430 (January 2, 2018), 83 FR 841 (January 8, 2018) (SR-NSCC-2017-017).

designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[4] On March 20, 2018, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the Proposed Rule Change.[6] The Commission did not receive any comments on the Proposed Rule Change.

Notice is hereby given that on June __, 2018, NSCC filed with the Commission Amendment No. 1 to the Proposed Rule Change, which superseded and replaced the Proposed Rule Change, as described below. The Commission is publishing this notice to solicit comments on the Proposed Rule Change, as amended, from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The Proposed Rule Change proposes to (1) adopt the Recovery & Wind-down Plan of NSCC ("R&W Plan" or "Plan"); and (2) amend NSCC's Rules & Procedures ("Rules")[7] in order to adopt Rule 41 (Corporation Default), Rule 42 (Wind-down of the Corporation), and Rule 60 (Market Disruption and Force Majeure) (each a "Proposed Rule" and, collectively, the "Proposed Rules"). The Proposed Rule Change would also propose to re-number the current Rule 42 (Wind-down of a Member, Fund Member or

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4 Securities Exchange Act Release No. 82669 (February 8, 2018), 83 FR 6653 (February 14, 2018) (SR-NSCC-2017-017).

5 15 U.S.C. 78s(b)(2)(B).

6 Securities Exchange Act Release No. 82908 (March 20, 2018), 83 FR 12986 (March 26, 2018) (SR-NSCC-2017-017).

7 Capitalized terms used herein and not otherwise defined herein are defined in the Rules, available at www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.

Insurance Carrier/Retirement Services Member) to Rule 40, which is currently reserved for future use.

The R&W Plan would be maintained by NSCC in compliance with Rule 17Ad-22(e)(3)(ii) under the Act, by providing plans for the recovery and orderly wind-down of NSCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described below.[8] The Proposed Rules are designed to (1) facilitate the implementation of the R&W Plan when necessary and, in particular, allow NSCC to effectuate its strategy for winding down and transferring its business; (2) provide Members and Limited Members with transparency around critical provisions of the R&W Plan that relate to their rights, responsibilities and obligations; and (3) provide NSCC with the legal basis to implement those provisions of the R&W Plan when necessary, as described below.

## II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[8] 17 CFR 240.17Ad-22(e)(3)(ii).

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

*Description of Amendment No. 1*

This filing constitutes Amendment No. 1 ("Amendment") to the Proposed Rule Change (also referred to below as the "Original Filing") previously filed by NSCC.[9] NSCC is amending the proposed R&W Plan and the Original Filing in order to clarify certain matters and make minor technical and conforming changes to the R&W Plan, as described below and as marked on Exhibit 4 hereto. To the extent such changes to the Plan require changes to the Original Filing, the information provided under "*Description of Proposed Changes*" in the Original Filing has been amended and is restated in its entirety below. Other sections of the Original Filing are unchanged and are restated in their entity for convenience.

First, this Amendment would clarify the meaning of the terms "cease to act," "Member default," "Defaulting Member," and "Member Default Losses" as such terms are used in the Plan. This Amendment would also make conforming changes as necessary to reflect the use of these terms.

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[9] See Securities Exchange Act Release No. 82581 (January 24, 2018), 83 FR 4327 (January 30, 2018) (SR-NSCC-2017-805).

Second, this Amendment would clarify that actions and tools described in the Plan that are available in one phase of the Crisis Continuum may be used in subsequent phases of the Crisis Continuum when appropriate to address the applicable situation. This Amendment would also clarify that the allocation of losses resulting from a Member default would be applied when provided for, and in accordance with, Rule 4 of the Rules.

Third, this Amendment would clarify that the Recovery Corridor (as defined therein) is not a "sub-phase" of the recovery phase. Rather, the Recovery Corridor is a period of time that would occur toward the end of the Member default phase, when indicators are that NSCC may transition into the recovery phase. Thus, the Recovery Corridor precedes the recovery phase within the Crisis Continuum.

Fourth, this Amendment would make revisions to address the allocation of losses resulting from a Member default in order to more closely conform such statements to the changes proposed by the Loss Allocation Filing, as defined below.

Fifth, this Amendment would clarify the notifications that NSCC would be required to make under the Proposed Rule 60 (Market Disruption and Force Majeure).

Finally, this Amendment would make minor, technical and conforming revisions to correct typographical errors and to simplify descriptions. For example, such revisions would use lower case for terms that are not defined therein, and would use upper case for terms that are defined. The Amendment would also simplify certain descriptions by removing extraneous words and statements that are repetitive. These minor, technical revisions would not alter the substance of the proposal.

*Description of Proposed Changes*

NSCC is proposing to adopt the R&W Plan to be used by the Board and management of NSCC in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would identify (i) the recovery tools available to NSCC to address the risks of (a) uncovered losses or liquidity shortfalls resulting from the default of one or more Members, and (b) losses arising from non-default events, such as damage to its physical assets, a cyber-attack, or custody and investment losses, and (ii) the strategy for implementation of such tools. The R&W Plan would also establish the strategy and framework for the orderly wind-down of NSCC and the transfer of its business in the remote event the implementation of the available recovery tools does not successfully return NSCC to financial viability.

As discussed in greater detail below, the R&W Plan would provide, among other matters, (i) an overview of the business of NSCC and its parent, The Depository Trust & Clearing Corporation ("DTCC"); (ii) an analysis of NSCC's intercompany arrangements and critical links to other financial market infrastructures ("FMIs"); (iii) a description of NSCC's services, and the criteria used to determine which services are considered critical; (iv) a description of the NSCC and DTCC governance structure; (v) a description of the governance around the overall recovery and wind-down program; (vi) a discussion of tools available to NSCC to mitigate credit/market and liquidity risks, including recovery indicators and triggers, and the governance around management of a stress event along a "Crisis Continuum" timeline; (vii) a discussion of potential non-default losses and the resources available to NSCC to address such losses, including recovery

triggers and tools to mitigate such losses; (viii) an analysis of the recovery tools' characteristics, including how they are comprehensive, effective, and transparent, how the tools provide appropriate incentives to Members to, among other things, control and monitor the risks they may present to NSCC, and how NSCC seeks to minimize the negative consequences of executing its recovery tools; and (ix) the framework and approach for the orderly wind-down and transfer of NSCC's business, including an estimate of the time and costs to effect a recovery or orderly wind-down of NSCC.

The R&W Plan would be structured as a roadmap, and would identify and describe the tools that NSCC may use to effect a recovery from the events and scenarios described therein. Certain recovery tools that would be identified in the R&W Plan are based in the Rules (including the Proposed Rules) and, as such, descriptions of those tools would include descriptions of, and reference to, the applicable Rules and any related internal policies and procedures. Other recovery tools that would be identified in the R&W Plan are based in contractual arrangements to which NSCC is a party, including, for example, existing committed or pre-arranged liquidity arrangements. Further, the R&W Plan would state that NSCC may develop further supporting internal guidelines and materials that may provide operationally for matters described in the Plan, and that such documents would be supplemental and subordinate to the Plan.

Key factors considered in developing the R&W Plan and the types of tools available to NSCC were its governance structure and the nature of the markets within which NSCC operates. As a result of these considerations, many of the tools available to NSCC that would be described in the R&W Plan are NSCC's existing, business-as-usual risk management and Member default management tools, which would continue to be

applied in scenarios of increasing stress. In addition to these existing, business-as-usual tools, the R&W Plan would describe NSCC's other principal recovery tools, which include, for example, (i) identifying, monitoring and managing general business risk and holding sufficient liquid net assets funded by equity ("LNA") to cover potential general business losses pursuant to the Clearing Agency Policy on Capital Requirements ("Capital Policy"),[10] (ii) maintaining the Clearing Agency Capital Replenishment Plan ("Replenishment Plan") as a viable plan for the replenishment of capital should NSCC's equity fall close to or below the amount being held pursuant to the Capital Policy,[11] and (iii) the process for the allocation of losses among Members, as provided in Rule 4.[12] The R&W Plan would provide governance around the selection and implementation of the recovery tool or tools most relevant to mitigate a stress scenario and any applicable loss or liquidity shortfall.

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10 See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR-DTC-2017-003, SR-FICC-2017-007, SR-NSCC-2017-004).

11 See id.

12 See Rule 4 (Clearing Fund), supra note 7. NSCC is proposing changes to Rule 4 and other related rules regarding allocation of losses in a separate filing submitted simultaneously with the Original Filing. See Securities Exchange Act Release Nos. 82430 (January 2, 2018), 83 FR 841 (January 8, 2018) (SR-NSCC-2017-017) and 82581 (January 24, 2018), 83 FR 4327 (January 30, 2018) (SR-NSCC-2017-805) (collectively referred to herein as the "Loss Allocation Filing"). NSCC has submitted an amendment to the Loss Allocation Filing. A copy of the amendment to the Loss Allocation Filing is available at http://www.dtcc.com/legal/sec-rule-filings.aspx. NSCC expects the Commission to review both proposals, as amended, together, and, as such, the proposal described in this filing anticipates the approval and implementation of those proposed changes to the Rules.

The development of the R&W Plan is facilitated by the Office of Recovery & Resolution Planning ("R&R Team") of DTCC.[13] The R&R Team reports to the DTCC Management Committee ("Management Committee") and is responsible for maintaining the R&W Plan and for the development and ongoing maintenance of the overall recovery and wind-down planning process. The Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, would review and approve the R&W Plan biennially, and would also review and approve any changes that are proposed to the R&W Plan outside of the biennial review.

As discussed in greater detail below, the Proposed Rules would define the procedures that may be employed in the event of NSCC's default and its wind-down, and would provide for NSCC's authority to take certain actions on the occurrence of a "Market Disruption Event," as defined therein. Significantly, the Proposed Rules would provide Members and Limited Members with transparency and certainty with respect to these matters. The Proposed Rules would facilitate the implementation of the R&W Plan, particularly NSCC's strategy for winding down and transferring its business, and would provide NSCC with the legal basis to implement those aspects of the R&W Plan.

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[13] DTCC operates on a shared services model with respect to NSCC and its other subsidiaries. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a subsidiary, including NSCC.

***NSCC R&W Plan***

The R&W Plan is intended to be used by the Board and NSCC's management in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would be structured to provide a roadmap, define the strategy, and identify the tools available to NSCC to either (i) recover in the event it experiences losses that exceed its prefunded resources (such strategies and tools referred to herein as the "Recovery Plan") or (ii) wind-down its business in a manner designed to permit the continuation of its critical services in the event that such recovery efforts are not successful (such strategies and tools referred to herein as the "Wind-down Plan"). The description of the R&W Plan below is intended to highlight the purpose and expected effects of the material aspects of the R&W Plan, and to provide Members and Limited Members with appropriate transparency into these features.

Business Overview, Critical Services, and Governance

The introduction to the R&W Plan would identify the document's purpose and its regulatory background, and would outline a summary of the Plan. The stated purpose of the R&W Plan is that it is to be used by the Board and NSCC management in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would be maintained by NSCC in compliance with Rule 17Ad-22(e)(3)(ii) under the Act[14] by providing plans for the recovery and orderly wind-down of NSCC.

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[14] 17 CFR 240.17Ad-22(e)(3)(ii).

The R&W Plan would describe DTCC's business profile, provide a summary of NSCC's services, and identify the intercompany arrangements and links between NSCC and other entities, including other FMIs. This overview section would provide a context for the R&W Plan by describing NSCC's business, organizational structure and critical links to other entities. By providing this context, this section would facilitate the analysis of the potential impact of utilizing the recovery tools set forth in later sections of the Recovery Plan, and the analysis of the factors that would be addressed in implementing the Wind-down Plan.

DTCC is a user-owned and user-governed holding company and is the parent company of NSCC and its affiliates, The Depository Trust Company ("DTC") and Fixed Income Clearing Corporation ("FICC", and, together with NSCC and DTC, the "Clearing Agencies"). The Plan would describe how corporate support services are provided to NSCC from DTCC and DTCC's other subsidiaries through intercompany agreements under a shared services model.

The Plan would provide a description of established links between NSCC and other FMIs, including The Options Clearing Corporation ("OCC"), CDS Clearing and Depository Services Inc. ("CDS"), and DTC. For example, the arrangement between NSCC and OCC governs the process by which OCC submits transactions to NSCC for settlement, and sets the time when the settlement obligations and the central counterparty trade guaranty shifts from OCC to NSCC with respect to these transactions.[15] The

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[15] See Securities Exchange Act Release Nos. 81266 (July 31, 2017), 82 FR 36484 (August 4, 2017) (SR-NSCC-2017-007, SR-OCC-2017-013); 81260 (July 31, 2017), 82 FR 36476 (August 4, 2017) (SR-NSCC-2017-803, SR-OCC-2017-804); Procedure III (Trade Recording Service (Interface with Qualified Clearing Agencies)), supra note 7.

arrangement with CDS enables participants of CDS to clear and settle OTC trades with U.S. broker-dealers through subaccounts maintained by CDS through its own membership with NSCC.[16] The interface between DTC and NSCC permits transactions to flow between DTC's system and NSCC's Continuous Net Settlement ("CNS") system in a collateralized environment.[17] NSCC's CNS relies on this interface with DTC for the book-entry movement of securities to settle transactions. This section of the Plan, identifying and briefly describing NSCC's established links, would provide a mapping of critical connections and dependencies that may need to be relied on or otherwise addressed in connection with the implementation of either the Recovery Plan or the Wind-down Plan.

The Plan would define the criteria for classifying certain of NSCC's services as "critical," and would identify those critical services and the rationale for their classification. This section would provide an analysis of the potential systemic impact from a service disruption, and is important for evaluating how the recovery tools and the wind-down strategy would facilitate and provide for the continuation of NSCC's critical services to the markets it serves. The criteria that would be used to identify an NSCC service or function as critical would include consideration as to (1) whether there is a lack of alternative providers or products; (2) whether failure of the service could impact NSCC's ability to perform its central counterparty services; (3) whether failure of the service could impact NSCC's ability to perform its netting services, and, as such, the

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16 See Rule 61 (International Links), supra note 7.

17 See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation), supra note 7.

availability of market liquidity; and (4) the service is interconnected with other participants and processes within the U.S. financial system, for example, with other FMIs, settlement banks, broker-dealers, and exchanges. The Plan would then list each of those services, functions or activities that NSCC has identified as "critical" based on the applicability of these four criteria. Such critical services would include, for example, trade capture and recording through the Universal Trade Capture system,[18] services supporting Correspondent Clearing relationships,[19] the CNS system,[20] the Balance Order Netting system,[21] Mutual Funds Services,[22] and the settlement of money payments with respect to transactions processed by NSCC.[23] The R&W Plan would also include a non-exhaustive list of NSCC services that are not deemed critical.

The evaluation of which services provided by NSCC are deemed critical is important for purposes of determining how the R&W Plan would facilitate the continuity of those services. As discussed further below, while NSCC's Wind-down Plan would provide for the transfer of all critical services to a transferee in the event NSCC's wind-down is implemented, it would anticipate that any non-critical services that are ancillary

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18 See Rule 7 (Comparison and Trade Recording Operation) and Procedure II (Trade Comparison and Recording Service), supra note 7.

19 See Procedure IV (Special Representative Service), supra note 7.

20 See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation), supra note 7.

21 See Rule 8 (Balance Order and Foreign Security Systems) and Procedure V (Balance Order Accounting Operation), supra note 7.

22 See Rule 52 (Mutual Funds Services), supra note 7.

23 See Rule 12 (Settlement) and Procedure VIII (Money Settlement Service), supra note 7.

and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership, would also be transferred.

The Plan would describe the governance structure of both DTCC and NSCC. This section of the Plan would identify the ownership and governance model of these entities at both the Board of Directors and management levels. The Plan would state that the stages of escalation required to manage recovery under the Recovery Plan or to invoke NSCC's wind-down under the Wind-down Plan would range from relevant business line managers up to the Board through NSCC's governance structure. The Plan would then identify the parties responsible for certain activities under both the Recovery Plan and the Wind-down Plan, and would describe their respective roles. The Plan would identify the Risk Committee of the Board ("Board Risk Committee") as being responsible for oversight of risk management activities at NSCC, which include focusing on both oversight of risk management systems and processes designed to identify and manage various risks faced by NSCC, and, due to NSCC's critical role in the markets in which it operates, oversight of NSCC's efforts to mitigate systemic risks that could impact those markets and the broader financial system.[24] The Plan would identify the DTCC Management Risk Committee ("Management Risk Committee") as primarily responsible for general, day-to-day risk management through delegated authority from the Board Risk Committee. The Plan would state that the Management Risk Committee has delegated specific day-to-day risk management, including management of risks addressed through margining systems and related activities, to the DTCC Group Chief Risk Office

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[24] The charter of the Board Risk Committee is available at http://www.dtcc.com/~/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Risk-Committee-Charter.pdf.

("GCRO"), which works with staff within the DTCC Financial Risk Management group. Finally, the Plan would describe the role of the Management Committee, which provides overall direction for all aspects of NSCC's business, technology, and operations and the functional areas that support these activities.

The Plan would describe the governance of recovery efforts in response to both default losses and non-default losses under the Recovery Plan, identifying the groups responsible for those recovery efforts. Specifically, the Plan would state that the Management Risk Committee provides oversight of actions relating to the default of a Member, which would be reported and escalated to it through the GCRO, and the Management Committee provides oversight of actions relating to non-default events that could result in a loss, which would be reported and escalated to it from the DTCC Chief Financial Officer ("CFO") and the DTCC Treasury group that reports to the CFO, and from other relevant subject matter experts based on the nature and circumstances of the non-default event.[25] More generally, the Plan would state that the type of loss and the nature and circumstances of the events that lead to the loss would dictate the components of governance to address that loss, including the escalation path to authorize those actions. As described further below, both the Recovery Plan and the Wind-down Plan

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[25] The Plan would state that these groups would be involved to address how to mitigate the financial impact of non-default losses, and in recommending mitigating actions, the Management Committee would consider information and recommendations from relevant subject matter experts based on the nature and circumstances of the non-default event. Any necessary operational response to these events, however, would be managed in accordance with applicable incident response/business continuity process; for example, processes established by the DTCC Technology Risk Management group would be followed in response to a cyber event.

would describe the governance of escalations, decisions, and actions under each of those plans.

Finally, the Plan would describe the role of the R&R Team in managing the overall recovery and wind-down program and plans for each of the Clearing Agencies.

NSCC Recovery Plan

The Recovery Plan is intended to be a roadmap of those actions that NSCC may employ to monitor and, as needed, stabilize its financial condition. As each event that could lead to a financial loss could be unique in its circumstances, the Recovery Plan would not be prescriptive and would permit NSCC to maintain flexibility in its use of identified tools and in the sequence in which such tools are used, subject to any conditions in the Rules or the contractual arrangement on which such tool is based. NSCC's Recovery Plan would consist of (1) a description of the risk management surveillance, tools, and governance that NSCC would employ across evolving stress scenarios that it may face as it transitions through a "Crisis Continuum," described below; (2) a description of NSCC's risk of losses that may result from non-default events, and the financial resources and recovery tools available to NSCC to manage those risks and any resulting losses; and (3) an evaluation of the characteristics of the recovery tools that may be used in response to either default losses or non-default losses, as described in greater detail below. In all cases, NSCC would act in accordance with the Rules, within the governance structure described in the R&W Plan, and in accordance with applicable regulatory oversight to address each situation in order to best protect NSCC, Members, and the markets in which it operates.

*Managing Member Default Losses and Liquidity Needs Through the Crisis Continuum.* The Recovery Plan would describe the risk management surveillance, tools, and governance that NSCC may employ across an increasing stress environment, which is referred to as the "Crisis Continuum." This description would identify those tools that can be employed to mitigate losses, and mitigate or minimize liquidity needs, as the market environment becomes increasingly stressed. The phases of the Crisis Continuum would include (1) a stable market phase, (2) a stress market phase, (3) a phase commencing with NSCC's decision to cease to act for a Member or Affiliated Family of Members (referred to in the Plan as the " Member default phase"),[26] and (4) a recovery phase. This section of the Recovery Plan would address conditions and circumstances relating to NSCC's decision to cease to act for a Member pursuant to the Rules.[27] In the Plan, "cease to act" and the events that may lead to such decision, are used within the context of Rule 46 of the Rules.[28] Further, for ease of reference, the R&W Plan would, for purposes of the Plan, use the term "Member default" to refer to the event or events that precipitate NSCC ceasing to act for a Member or an Affiliated Family, would use the term "Defaulting Member" to refer to a Member for which NSCC has ceased to act, and would use the term "Member Default Losses" to refer to losses that arise out of or relate to the Member default (including any losses that arise from liquidation of that Member's

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[26] The Plan would define an "Affiliated Family" of Members as a number of affiliated entities that are all Members of NSCC.

[27] See Rule 46 (Restrictions on Access to Services), supra note 7.

[28] Id.

portfolio), and to distinguish such losses from those that arise out of the business or other events not related to a Member default, which are separately addressed in the Plan.

The Recovery Plan would provide context to its roadmap through this Crisis Continuum by describing NSCC's ongoing management of credit, market and liquidity risk, and its existing process for measuring and reporting its risks as they align with established thresholds for its tolerance of those risks. The Recovery Plan would discuss the management of credit/market risk and liquidity exposures together, because the tools that address these risks can be deployed either separately or in a coordinated approach in order to address both exposures. NSCC manages these risk exposures collectively to limit their overall impact on NSCC and its membership. As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.[29] NSCC manages its liquidity risks with an objective of maintaining sufficient resources to be able to fulfill obligations that have been guaranteed by NSCC in the event of a Member default that presents the largest aggregate liquidity exposure to NSCC over the settlement cycle.[30]

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[29] See Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters), supra note 7. Because NSCC does not maintain a guaranty fund separate and apart from the Clearing Fund it collects from Members, NSCC monitors its credit exposure to its Members by managing the market risks of each Member's unsettled portfolio through the collection of the Clearing Fund. The aggregate of all Members' Required Fund Deposits comprises the Clearing Fund that represents NSCC's prefunded resources to address uncovered loss exposures, as provided for in proposed Rule 4. Therefore, NSCC's market risk management strategy is designed to comply with Rule 17Ad-22(e)(4) under the Act, where these risks are referred to as "credit risks." See also 17 CFR 240.17Ad-22(e)(4).

[30] NSCC's liquidity risk management strategy, including the manner in which NSCC utilizes its liquidity tools, is described in the Clearing Agency Liquidity

The Recovery Plan would outline the metrics and indicators that NSCC has developed to evaluate a stress situation against established risk tolerance thresholds. Each risk mitigation tool identified in the Recovery Plan would include a description of the escalation thresholds that allow for effective and timely reporting to the appropriate internal management staff and committees, or to the Board. The Recovery Plan would make clear that these tools and escalation protocols would be calibrated across each phase of the Crisis Continuum. The Recovery Plan would also establish that NSCC would retain the flexibility to deploy such tools either separately or in a coordinated approach, and to use other alternatives to these actions and tools as necessitated by the circumstances of a particular Member default, in accordance with the Rules. Therefore, the Recovery Plan would both provide NSCC with a roadmap to follow within each phase of the Crisis Continuum, and would permit it to adjust its risk management measures to address the unique circumstances of each event.

The Recovery Plan would describe the conditions that mark each phase of the Crisis Continuum, and would identify actions that NSCC could take as it transitions through each phase in order to both prevent losses from materializing through active risk management, and to restore the financial health of NSCC during a period of stress.

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Risk Management Framework. See Securities Exchange Act Release Nos. 80489 (April 19, 2017), 82 FR 19120 (April 25, 2017) (SR-DTC-2017-004, SR-NSCC-2017-005, SR-FICC-2017-008); 81194 (July 24, 2017), 82 FR 35241 (July 28, 2017) (SR-DTC-2017-004, SR-NSCC-2017-005, SR-FICC-2017-008).

The stable market phase of the Crisis Continuum would describe active risk management activities in the normal course of business. These activities would include (1) routine monitoring of margin adequacy through daily review of back testing and stress testing results that review the adequacy of NSCC's margin calculations, and escalation of those results to internal and Board committees;[31] and (2) routine monitoring of liquidity adequacy through review of daily liquidity studies that measure sufficiency of available liquidity resources to meet cash settlement obligations of the Member that would generate the largest aggregate payment obligation.[32]

The Recovery Plan would describe some of the indicators of the stress market phase of the Crisis Continuum, which would include, for example, volatility in market prices of certain assets where there is increased uncertainty among market participants about the fundamental value of those assets. This phase would involve general market stresses, when no Member default would be imminent. Within the description of this phase, the Recovery Plan would provide that NSCC may take targeted, routine risk management measures as necessary and as permitted by the Rules.

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[31] NSCC's stress testing practices are described in the Clearing Agency Stress Testing Framework (Market Risk). See Securities Exchange Act Release Nos. 80485 (April 19, 2017), 82 FR 19131 (April 25, 2017) (SR-DTC-2017-005, SR-FICC-2017-009, SR-NSCC-2017-006); 81192 (July 24, 2017), 82 FR 35245 (July 28, 2017) (SR-DTC-2017-005, SR-FICC-2017-009, SR-NSCC-2017-006).

[32] See supra note 30.

Within the Member default phase of the Crisis Continuum, the Recovery Plan would provide a roadmap for the existing procedures that NSCC would follow in the event of a Member default and any decision by NSCC to cease to act for that Member.[33] The Recovery Plan would provide that the objectives of NSCC's actions upon a Member or Affiliated Family default are to (1) minimize losses and market exposure of the affected Members and NSCC's non-Defaulting Members; and (2), to the extent practicable, minimize disturbances to the affected markets. The Recovery Plan would describe tools, actions, and related governance for both market risk monitoring and liquidity risk monitoring through this phase. For example, in connection with managing its market risk during this phase, NSCC would, pursuant to the Rules, (1) monitor and assess the adequacy of Clearing Fund resources; (2), when necessary and appropriate pursuant to the Rules, assess and collect additional margin requirements; and (3) follow its operational procedures to liquidate the Defaulting Member's portfolio. Management of liquidity risk through this phase would involve ongoing monitoring of the adequacy of NSCC's liquidity resources, and the Recovery Plan would identify certain actions NSCC may deploy as it deems necessary to mitigate a potential liquidity shortfall, which would include, for example, adjusting its strategy for closing out the Defaulting Member's portfolio or seeking additional liquidity resources. The Recovery Plan would state that, throughout this phase, relevant information would be escalated and reported to both internal management committees and the Board Risk Committee.

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[33] See Rule 18 (Procedures for When the Corporation Declines or Ceases to Act) and Rule 46 (Restrictions on Access to Services), supra note 7.

The Recovery Plan would also identify financial resources available to NSCC, pursuant to the Rules, to address losses arising out of a Member default. Specifically, Rule 4, as proposed to be amended by the Loss Allocation Filing, would provide that losses remaining after application of the Defaulting Member's resources be satisfied first by applying a "Corporate Contribution," and then, if necessary, by allocating remaining losses among the membership in accordance with such Rule 4.[34]

In order to provide for an effective and timely recovery, the Recovery Plan would describe the period of time that would occur near the end of the Member default phase, during which NSCC may experience stress events or observe early warning indicators that allow it to evaluate its options and prepare for the recovery phase (referred to in the Plan as the "Recovery Corridor"). The Recovery Plan would then describe the recovery phase of the Crisis Continuum, which would begin on the date that NSCC issues the first Loss Allocation Notice of the second loss allocation round with respect to a given "Event Period."[35] The recovery phase would describe actions that NSCC may take to avoid entering into a wind down of its business.

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[34] See supra note 12. The Loss Allocation Filing proposes to amend Rule 4 to define the amount NSCC would contribute to address a loss resulting from either a Member default or a non-default event as the "Corporate Contribution." This amount would be 50 percent (50%) of the "General Business Risk Capital Requirement," which is calculated pursuant to the Capital Policy and is an amount sufficient to cover potential general business losses so that NSCC can continue operations and services as a going concern if those losses materialize, in compliance with Rule 17Ad-22(e)(15) under the Act. See also supra note 10; 17 CFR 240.17Ad-22(e)(15).

[35] The Loss Allocation Filing proposes to amend Rule 4 to introduce the concept of an "Event Period" as the ten (10) Business Days beginning on (i) with respect to a Member default, the day on which NSCC notifies Members that it has ceased to act for a Member under the Rules, or (ii) with respect to a non-default loss, the day that NSCC notifies Members of the determination by the Board that there is a

NSCC expects that significant deterioration of liquidity resources would cause it to enter the Recovery Corridor. As such, the Plan would describe the actions NSCC may take aimed at replenishing those resources. Recovery Corridor indicators may include, for example, a rapid and material change in market prices or substantial intraday activity volume by the Member that subsequently defaults, neither of which are mitigated by intraday margin calls, or subsequent defaults by other Members or Affiliated Families during a compressed time period. Throughout the Recovery Corridor, NSCC would monitor the adequacy of its resources and the expected timing of replenishment of those resources, and would do so through the monitoring of certain corridor indicator metrics.

The majority of the corridor indicators, as identified in the Recovery Plan, relate directly to conditions that may require NSCC to adjust its strategy for hedging and liquidating a Defaulting Member's portfolio, and any such changes would include an assessment of the status of the corridor indicators. Corridor indicators would include, for example, effectiveness and speed of NSCC's efforts to close out the portfolio of the Defaulting Member, and an impediment to the availability of its financial resources. For each corridor indicator, the Recovery Plan would identify (1) measures of the indicator, (2) evaluations of the status of the indicator, (3) metrics for determining the status of the deterioration or improvement of the indicator, and (4) "Corridor Actions," which are

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non-default loss event, as described in greater detail in that filing. The proposed Rule 4 would define a "round" as a series of loss allocations relating to an Event Period, and would provide that the first Loss Allocation Notice in a first, second, or subsequent round shall expressly state that such notice reflects the beginning of a first, second, or subsequent round. The maximum allocable loss amount of a round is equal to the sum of the "Loss Allocation Caps" (as defined in the proposed Rule 4) of those Members included in the round. See supra note 12.

steps that may be taken to improve the status of the indicator,[36] as well as management escalations required to authorize those steps. Because NSCC has never experienced the default of multiple Members, it has not, historically, measured the deterioration or improvements metrics of the corridor indicators. As such, these metrics were chosen based on the business judgment of NSCC management.

The Recovery Plan would also describe the reporting and escalation of the status of the corridor indicators throughout the Recovery Corridor. Significant deterioration of a corridor indicator, as measured by the metrics set out in the Recovery Plan, would be escalated to the Board. NSCC management would review the corridor indicators and the related metrics at least annually, and would modify these metrics as necessary in light of observations from simulations of Member defaults and other analyses. Any proposed modifications would be reviewed by the Management Risk Committee and the Board Risk Committee. The Recovery Plan would estimate that NSCC may remain in the Recovery Corridor between one day and two weeks. This estimate is based on historical data observed in past Member defaults, the results of simulations of Member defaults, and periodic liquidity analyses conducted by NSCC. The actual length of a Recovery Corridor would vary based on actual market conditions observed at the time, and NSCC would expect the Recovery Corridor to be shorter in market conditions of increased stress.

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[36] The Corridor Actions that would be identified in the Plan are indicative, but not prescriptive; therefore, if NSCC needs to consider alternative actions due to the applicable facts and circumstances, the escalation of those alternative actions would follow the same escalation protocol identified in the Plan for the Corridor Indicator to which the action relates.

The Recovery Plan would outline steps by which NSCC may allocate its losses, which would occur when and in the order provided in Rule 4, as amended.[37] The Recovery Plan would also identify tools that may be used to address foreseeable shortfalls of NSCC's liquidity resources following a Member default, and would provide that these tools may be used as appropriate during the Crisis Continuum to address liquidity shortfalls if they arise. The goal in managing NSCC's qualified liquidity resources is to maximize resource availability in an evolving stress situation, to maintain flexibility in the order and use of sources of liquidity, and to repay any third party lenders of liquidity in a timely manner. These liquidity tools include, for example, NSCC's committed 364-day credit facility,[38] and the issuance and private placement of additional short-term promissory notes ("commercial paper") and extendible notes, the cash proceeds of which provide NSCC with prefunded liquidity.[39] Additional voluntary or uncommitted tools to address potential liquidity shortfalls, for example uncommitted bank loans, which may supplement NSCC's other liquid resources described herein, would also be identified in the Recovery Plan. The Recovery Plan would state that, due to the extreme nature of a stress event that would cause NSCC to consider the use of these liquidity tools, the availability and capacity of these liquidity tools, and the willingness of counterparties to lend, cannot be accurately predicted and are dependent

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[37] As these matters are described in greater detail in the Loss Allocation Filing and in the proposed amendments to Rule 4, described therein, reference is made to that filing and the details are not repeated here. See supra note 12.

[38] See Securities Exchange Act Release No. 80605 (May 5, 2017), 82 FR 21850 (May 10, 2017) (SR-DTC-2017-802, SR-NSCC-2017-802).

[39] See Securities Exchange Act Release No. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015) (SR-NSCC-2015-802).

on the circumstances of the applicable stress period, including market price volatility, actual or perceived disruptions in financial markets, the costs to NSCC of utilizing these tools, and any potential impact on NSCC's credit rating.

As stated above, the Recovery Plan would state that NSCC will have entered the recovery phase on the date that it issues the first Loss Allocation Notice of the second loss allocation round with respect to a given Event Period. The Recovery Plan would provide that, during the recovery phase, NSCC would continue and, as needed, enhance, the monitoring and remedial actions already described in connection with previous phases of the Crisis Continuum, and would remain in the recovery phase until its financial resources are expected to be or are fully replenished, or until the Wind-down Plan is triggered, as described below.

The Recovery Plan would describe governance for the actions and tools that may be employed within each phase of the Crisis Continuum, which would be dictated by the facts and circumstances applicable to the situation being addressed. Such facts and circumstances would be measured by the various indicators and metrics applicable to that phase of the Crisis Continuum, and would follow the relevant escalation protocols that would be described in the Recovery Plan. The Recovery Plan would also describe the governance procedures around a decision to cease to act for a Member, pursuant to the Rules, and around the management and oversight of the subsequent liquidation of the Defaulting Member's portfolio. The Recovery Plan would state that, overall, NSCC would retain flexibility in accordance with the Rules, its governance structure, and its regulatory oversight, to address a particular situation in order to best protect NSCC and the Members, and to meet the primary objectives, throughout the Crisis Continuum, of

minimizing losses and, where consistent and practicable, minimizing disturbance to affected markets.

*Non-Default Losses.* The Recovery Plan would outline how NSCC may address losses that result from events other than a Member default. While these matters are addressed in greater detail in other documents, this section of the Plan would provide a roadmap to those documents and an outline for NSCC's approach to monitoring and managing losses that could result from a non-default event. The Plan would first identify some of the risks NSCC faces that could lead to these losses, which include, for example, the business and profit/loss risks of unexpected declines in revenue or growth of expenses; the operational risks of disruptions to systems or processes that could lead to large losses, including those resulting from, for example, a cyber-attack; and custody or investment risks that could lead to financial losses. The Recovery Plan would describe NSCC's overall strategy for the management of these risks, which includes a "three lines of defense" approach to risk management that allows for comprehensive management of risk across the organization.[40] The Recovery Plan would also describe NSCC's approach

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[40] This "three lines of defense" approach to risk management includes (1) a first line of defense comprised of the various business lines and functional units that support the products and services offered by NSCC; (2) a second line of defense comprised of control functions that support NSCC, including the risk management, legal and compliance areas; and (3) a third line of defense, which is performed by an internal audit group. The Clearing Agency Risk Management Framework includes a description of this "three lines of defense" approach to risk management, and addresses how NSCC comprehensively manages various risks, including operational, general business, investment, custody, and other risks that arise in or are borne by it. See Securities Exchange Act Release No. 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (SR-DTC-2017-013, SR-FICC-2017-016, SR-NSCC-2017-012). The Clearing Agency Operational Risk Management Framework describes the manner in which NSCC manages operational risks, as defined therein. See Securities Exchange Act Release No.

to financial risk and capital management. The Plan would identify key aspects of this approach, including, for example, an annual budget process, business line performance reviews with management, and regular review of capital requirements against LNA. These risk management strategies are collectively intended to allow NSCC to effectively identify, monitor, and manage risks of non-default losses.

The Plan would identify the two categories of financial resources NSCC maintains to cover losses and expenses arising from non-default risks or events as (1) LNA, maintained, monitored, and managed pursuant to the Capital Policy, which include (a) amounts held in satisfaction of the General Business Risk Capital Requirement,[41] (b) the Corporate Contribution,[42] and (c) other amounts held in excess of NSCC's capital requirements pursuant to the Capital Policy; and (2) resources available pursuant to the loss allocation provisions of Rule 4.[43]

The Plan would address the process by which the CFO and the DTCC Treasury group would determine which available LNA resources are most appropriate to cover a loss that is caused by a non-default event. This determination involves an evaluation of a number of factors, including the current and expected size of the loss, the expected time horizon over when the loss or additional expenses would materialize, the current and projected available LNA, and the likelihood LNA could be successfully replenished

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81745 (September 28, 2017), 82 FR 46332 (October 4, 2017) (SR-DTC-2017-014, SR-FICC-2017-017, SR-NSCC-2017-013).

41 See supra note 34.

42 See supra note 34.

43 See supra note 12.

pursuant to the Replenishment Plan, if triggered.[44] Finally the Plan would discuss how NSCC would apply its resources to address losses resulting from a non-default event, including the order of resources it would apply if the loss or liability exceeds NSCC's excess LNA amounts, or is large relative thereto, and the Board has declared the event a "Declared Non-Default Loss Event" pursuant to Rule 4.[45]

The Plan would also describe proposed Rule 60 (Market Disruption and Force Majeure), which NSCC is proposing to adopt in the Rules. This Proposed Rule would provide transparency around how NSCC would address extraordinary events that may occur outside its control. Specifically, the Proposed Rule would define a "Market Disruption Event" and the governance around a determination that such an event has occurred. The Proposed Rule would also describe NSCC's authority to take actions during the pendency of a Market Disruption Event that it deems appropriate to address such an event and facilitate the continuation of its services, if practicable, as described in greater detail below.

The Plan would describe the interaction between the Proposed Rule and NSCC's existing processes and procedures addressing business continuity management and disaster recovery (generally, the "BCM/DR procedures"), making clear that the Proposed Rule is designed to support those BCM/DR procedures and to address circumstances that may be exogenous to NSCC and not necessarily addressed by the BCM/DR procedures. Finally, the Plan would describe that, because the operation of the Proposed Rule is specific to each applicable Market Disruption Event, the Proposed Rule does not define a

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44 See supra note 10.

45 See supra note 12.

time limit on its application. However, the Plan would note that actions authorized by the Proposed Rule would be limited to the pendency of the applicable Market Disruption Event, as made clear in the Proposed Rule. Overall, the Proposed Rule is designed to mitigate risks caused by Market Disruption Events and, thereby, minimize the risk of financial loss that may result from such events.

*Recovery Tool Characteristics.* The Recovery Plan would describe NSCC's evaluation of the tools identified within the Recovery Plan, and its rationale for concluding that such tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to Members and minimize negative impact on Members and the financial system, in compliance with guidance published by the Commission in connection with the adoption of Rule 17Ad-22(e)(3)(ii) under the Act.[46] NSCC's analysis and the conclusions set forth in this section of the Recovery Plan are described in greater detail in Item 3(b) of this filing, below.

NSCC Wind-down Plan

The Wind-down Plan would provide the framework and strategy for the orderly wind-down of NSCC if the use of the recovery tools described in the Recovery Plan do not successfully return NSCC to financial viability. While NSCC believes that, given the comprehensive nature of the recovery tools, such event is extremely unlikely, as described in greater detail below, NSCC is proposing a wind-down strategy that provides for (1) the transfer of NSCC's business, assets and membership to another legal entity, (2) such transfer being effected in connection with proceedings under Chapter 11 of the

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[46] Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14).

U.S. Federal Bankruptcy Code,[47] and (3) after effectuating this transfer, NSCC liquidating any remaining assets in an orderly manner in bankruptcy proceedings. NSCC believes that the proposed transfer approach to a wind-down would meet its objectives of (1) assuring that NSCC's critical services will be available to the market as long as there are Members in good standing, and (2) minimizing disruption to the operations of Members and financial markets generally that might be caused by NSCC's failure.

In describing the transfer approach to NSCC's Wind-down Plan, the Plan would identify the factors that NSCC considered in developing this approach, including the fact that NSCC does not own material assets that are unrelated to its clearance and settlement activities. As such, a business reorganization or "bail-in" of debt approach would be unlikely to mitigate significant losses. Additionally, NSCC's approach was developed in consideration of its critical and unique position in the U.S. markets, which precludes any approach that would cause NSCC's critical services to no longer be available.

First, the Wind-down Plan would describe the potential scenarios that could lead to the wind-down of NSCC, and the likelihood of such scenarios. The Wind-down Plan would identify the time period leading up to a decision to wind-down NSCC as the "Runway Period." This period would follow the implementation of any recovery tools, as it may take a period of time, depending on the severity of the market stress at that time, for these tools to be effective or for NSCC to realize a loss sufficient to cause it to be unable to effectuate settlements and repay its obligations.[48] The Wind-down Plan would

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[47] 11 U.S.C. 1101 et seq.

[48] The Wind-down Plan would state that, given NSCC's position as a user-governed financial market utility, it is possible that Members might voluntarily elect to provide additional support during the recovery phase leading up to a potential

identify some of the indicators that it has entered this Runway Period, which would include, for example, successive Member defaults, significant Member retirements thereafter, and NSCC's inability to replenish its financial resources following the liquidation of the portfolio of the Defaulting Member(s).

The trigger for implementing the Wind-down Plan would be a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning NSCC to viability as a going concern. As described in the Plan, NSCC believes this is an appropriate trigger because it is both broad and flexible enough to cover a variety of scenarios, and would align incentives of NSCC and the Members to avoid actions that might undermine NSCC's recovery efforts. Additionally, this approach takes into account the characteristics of NSCC's recovery tools and enables the Board to consider (1) the presence of indicators of a successful or unsuccessful recovery, and (2) potential for knock-on effects of continued iterative application of NSCC's recovery tools.

The Wind-down Plan would describe the general objectives of the transfer strategy, and would address assumptions regarding the transfer of NSCC's critical services, business, assets and membership, and the assignment of NSCC's links with other FMIs, to another legal entity that is legally, financially, and operationally able to provide NSCC's critical services to entities that wish to continue their membership following the transfer ("Transferee"). The Wind-down Plan would provide that the Transferee would be either (1) a third party legal entity, which may be an existing or

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trigger of the Wind-down Plan, but would also make clear that NSCC cannot predict the willingness of Members to do so.

newly established legal entity or a bridge entity formed to operate the business on an interim basis to enable the business to be transferred subsequently ("Third Party Transferee"); or (2) an existing, debt-free failover legal entity established ex-ante by DTCC ("Failover Transferee") to be used as an alternative Transferee in the event that no viable or preferable Third Party Transferee timely commits to acquire NSCC's business. NSCC would seek to identify the proposed Transferee, and negotiate and enter into transfer arrangements during the Runway Period and prior to making any filings under Chapter 11 of the U.S. Federal Bankruptcy Code.[49] As stated above, the Wind-down Plan would anticipate that the transfer to the Transferee be effected in connection with proceedings under Chapter 11 of the U.S. Federal Bankruptcy Code, and pursuant to a bankruptcy court order under Section 363 of the Bankruptcy Code, such that the transfer would be free and clear of claims against, and interests in, NSCC, except to the extent expressly provided in the court's order.[50]

In order to effect a timely transfer of its services and minimize the market and operational disruption of such transfer, NSCC would expect to transfer all of its critical services and any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership. Following the transfer, the Wind-down Plan would anticipate that the Transferee and its continuing membership would determine whether to continue to provide any transferred non-critical service on an ongoing basis, or terminate the non-critical service following some transition period. NSCC's Wind-down Plan would anticipate that the Transferee

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[49] See 11 U.S.C. 1101 et seq.

[50] See id. at 363.

would enter into a transition services agreement with DTCC so that DTCC would continue to provide the shared services it currently provides to NSCC, including staffing, infrastructure and operational support. The Wind-down Plan would also anticipate the assignment of NSCC's link arrangements, including those with DTC, CDS and OCC, described above, to the Transferee.[51] The Wind-down Plan would provide that Members' open positions existing prior to the effective time of the transfer would be addressed by the provisions of the proposed Wind-down Rule and Corporation Default Rule, as defined and described below, and that the Transferee would not acquire any pending or open transactions with the transfer of the business. The Wind-down Plan would anticipate that the Transferee would accept transactions for processing with a trade date from and after the effective time of the transfer.

The Wind-down Plan would provide that, following the effectiveness of the transfer to the Transferee, the wind-down of NSCC would involve addressing any residual claims against NSCC through the bankruptcy process and liquidating the legal entity. As such, and as stated above, the Wind-down Plan does not contemplate NSCC continuing to provide services in any capacity following the transfer time, and any services not transferred would be terminated.

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51 The proposed transfer arrangements outlined in the Wind-down Plan do not contemplate the transfer of any credit or funding agreements, which are generally not assignable by NSCC. However, to the extent the Transferee adopts rules substantially identical to those NSCC has in effect prior to the transfer, it would have the benefit of any rules-based liquidity funding. The Wind-down Plan contemplates that no Clearing Fund would be transferred to the Transferee, as it is not held in a bankruptcy remote manner and it is the primary prefunded liquidity resource to be accessed in the recovery phase.

The Wind-down Plan would also identify the key dependencies for the effectiveness of the transfer, which include regulatory approvals that would permit the Transferee to be legally qualified to provide the transferred services from and after the transfer, and approval by the applicable bankruptcy court of, among other things, the proposed sale, assignments, and transfers to the Transferee.

The Wind-down Plan would address governance matters related to the execution of the transfer of NSCC's business and its wind-down. The Wind-down Plan would address the duties of the Board to execute the wind-down of NSCC in conformity with (1) the Rules, (2) the Board's fiduciary duties, which mandate that it exercise reasonable business judgment in performing these duties, and (3) NSCC's regulatory obligations under the Act as a registered clearing agency. The Wind-down Plan would also identify certain factors the Board may consider in making these decisions, which would include, for example, whether NSCC could safely stabilize the business and protect its value without seeking bankruptcy protection, and NSCC's ability to continue to meet its regulatory requirements.

The Wind-down Plan would describe (1) actions NSCC or DTCC may take to prepare for wind-down in the period before NSCC experiences any financial distress, (2) actions NSCC would take both during the recovery phase and the Runway Period to prepare for the execution of the Wind-down Plan, and (3) actions NSCC would take upon commencement of bankruptcy proceedings to effectuate the Wind-down Plan.

Finally, the Wind-down Plan would include an analysis of the estimated time and costs to effectuate the plan, and would provide that this estimate be reviewed and approved by the Board annually. In order to estimate the length of time it might take to

achieve a recovery or orderly wind-down of NSCC's critical operations, as contemplated by the R&W Plan, the Wind-down Plan would include an analysis of the possible sequencing and length of time it might take to complete an orderly wind-down and transfer of critical operations, as described in earlier sections of the R&W Plan. The Wind-down Plan would also include in this analysis consideration of other factors, including the time it might take to complete any further attempts at recovery under the Recovery Plan. The Wind-down Plan would then multiply this estimated length of time by NSCC's average monthly operating expenses, including adjustments to account for changes to NSCC's profit and expense profile during these circumstances, over the previous twelve months to determine the amount of LNA that it should hold to achieve a recovery or orderly wind-down of NSCC's critical operations. The estimated wind-down costs would constitute the "Recovery/Wind-down Capital Requirement" under the Capital Policy.[52] Under that policy, the General Business Risk Capital Requirement is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement.[53]

The R&W Plan is designed as a roadmap, and the types of actions that may be taken both leading up to and in connection with implementation of the Wind-down Plan would be primarily addressed in other supporting documentation referred to therein.

The Wind-down Plan would address proposed Rule 41 (Corporation Default) and proposed Rule 42 (Wind-down of the Corporation), which would be adopted to facilitate the implementation of the Wind-down Plan, and are discussed below.

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[52] See supra note 10.

[53] See supra note 10.

***Proposed Rules***

In connection with the adoption of the R&W Plan, NSCC is proposing to adopt the Proposed Rules, each described below. The Proposed Rules would facilitate the execution of the R&W Plan and would provide Members and Limited Members with transparency as to critical aspects of the Plan, particularly as they relate to the rights and responsibilities of both NSCC and Members. The Proposed Rules also provide a legal basis to these aspects of the Plan.

Rule 41 (Corporation Default)

The proposed Rule 41 ("Corporation Default Rule") would provide a mechanism for the termination, valuation and netting of unsettled, guaranteed CNS transactions in the event NSCC is unable to perform its obligations or otherwise suffers a defined event of default, such as entering insolvency proceedings. The proposed Corporation Default Rule would provide Members with transparency and certainty regarding what would happen if NSCC were to fail (defined in the proposed Rule as a "Corporation Default").

The proposed rule would define the events that would constitute a Corporation Default, which would generally include (1) the failure of NSCC to make any undisputed payment or delivery to a Member if such failure is not remedied within seven days after notice of such failure is given to NSCC; (2) NSCC is dissolved; (3) NSCC institutes a proceeding seeking a judgment of insolvency or bankruptcy, or a proceeding is instituted against it seeking a judgment of bankruptcy or insolvency and such judgment is entered; or (4) NSCC seeks or becomes subject to the appointment of a receiver, trustee or similar

official pursuant to the federal securities laws or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act[54] for it or for all or substantially all of its assets.

Upon a Corporation Default, the proposed Corporation Default Rule would provide that all unsettled, guaranteed CNS transactions would be terminated and, no later than forty-five days from the date on which the event that constitutes a Corporation Default occurred (or "Default Date"), the Board would determine a single net amount owed by or to each Member with respect to such transactions pursuant to the valuation procedures set forth in the Proposed Rule. Essentially, for each affected position in a CNS Security, the "CNS Market Value" would be determined by using the Current Market Price for that security as determined in the CNS System as of the close of business on the next Business Day following the Default Date. NSCC would determine a "Net Contract Value" for each Member's net unsettled long or short position in a CNS Security by netting the Member's (i) contract price for such net position that, as of the Default Date, has not yet passed the Settlement Date, and (ii) the Current Market Price in the CNS System on the Default Date for its fail positions. To determine each Member's "CNS Close-out Value," (i) the Net Contract Value for each CUSIP would be subtracted from the CNS Market Value for such CUSIP, and (ii) the resulting difference for all CUSIPS in which the Member had a net long or short position would be summed, and would be netted and offset against any other amounts that may be due to or owing from the Member under the Rules. The proposed Corporation Default Rule would provide for notification to each Member of its CNS Close-out Value, and would also address

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[54] 12 U.S.C. 5381-5394.

interpretation of the Rules in relation to certain terms that are defined in the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA").[55]

NSCC believes this valuation approach, which is comparable to the approach adopted by other central counterparties, is appropriate for NSCC given the market in which NSCC operates and the volumes of transactions it processes in CNS, because it would provide for a common, clear and transparent valuation methodology and price per CUSIP applicable to all affected Members.

Rule 42 (Wind-down of the Corporation)

The proposed Rule 42 ("Wind-down Rule") would be adopted to facilitate the execution of the Wind-down Plan. The Wind-down Rule would include a proposed set of defined terms that would be applicable only to the provisions of this Proposed Rule. The Wind-down Rule would make clear that a wind-down of NSCC's business would occur (1) after a decision is made by the Board, and (2) in connection with the transfer of NSCC's services to a Transferee, as described therein. Generally, the proposed Wind-down Rule is designed to create clear mechanisms for the transfer of Eligible Members, Eligible Limited Members, and Settling Banks (as these terms would be defined in the Wind-down Rule), and NSCC's business, in order to provide for continued access to critical services and to minimize disruption to the markets in the event the Wind-down Plan is initiated.

*Wind-down Trigger.* First, the Proposed Rule would make clear that the Board is responsible for initiating the Wind-down Plan, and would identify the criteria the Board would consider when making this determination. As provided for in the Wind-down Plan

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[55] 12 U.S.C. 1811 et seq.

and in the proposed Wind-down Rule, the Board would initiate the Plan if, in the exercise of its business judgment and subject to its fiduciary duties, it has determined that the execution of the Recovery Plan has not or is not likely to restore NSCC to viability as a going concern, and the implementation of the Wind-down Plan, including the transfer of NSCC's business, is in the best interests of NSCC, Members and Limited Members, its shareholders and creditors, and the U.S. financial markets.

*Identification of Critical Services; Designation of Dates and Times for Specific Actions.* The Proposed Rule would provide that, upon making a determination to initiate the Wind-down Plan, the Board would identify the critical and non-critical services that would be transferred to the Transferee at the Transfer Time (as defined below and in the Proposed Rule), as well as any non-critical services that would not be transferred to the Transferee. The proposed Wind-down Rule would establish that any services transferred to the Transferee will only be provided by the Transferee as of the Transfer Time, and that any non-critical services that are not transferred to the Transferee would be terminated at the Transfer Time. The Proposed Rule would also provide that the Board would establish (1) an effective time for the transfer of NSCC's business to a Transferee ("Transfer Time"), (2) the last day that transactions may be submitted to NSCC for processing ("Last Transaction Acceptance Date"), and (3) the last day that transactions submitted to NSCC will be settled ("Last Settlement Date").

*Treatment of Pending Transactions.* The Wind-down Rule would also authorize the Board to provide for the settlement of pending transactions prior to the Transfer Time, so long as the Corporation Default Rule has not been triggered. For example, the Proposed Rule would provide the Board with the ability to, if it deems practicable, based

on NSCC's resources at that time, allow pending transactions to complete prior to the transfer of NSCC's business to a Transferee. The Board would also have the ability to allow Members to only submit trades that would effectively offset pending positions or provide that transactions will be processed in accordance with special or exception processing procedures. The Proposed Rule is designed to enable these actions in order to facilitate settlement of pending transactions and reduce claims against NSCC that would have to be satisfied after the transfer has been effected. If none of these actions are deemed practicable (or if the Corporation Default Rule has been triggered), then the provisions of the proposed Corporation Default Rule would apply to the treatment of open, pending transactions.

The Proposed Rule would make clear, however, that NSCC would not accept any transactions for processing after the Last Transaction Acceptance Date or which are designated to settle after the Last Settlement Date. Any transactions to be processed and/or settled after the Transfer Time would be required to be submitted to the Transferee, and would not be NSCC's responsibility.

*Notice Provisions.* The proposed Wind-down Rule would provide that, upon a decision to implement the Wind-down Plan, NSCC would provide Members and Limited Members and its regulators with a notice that includes material information relating to the Wind-down Plan and the anticipated transfer of NSCC's membership and business, including, for example, (1) a brief statement of the reasons for the decision to implement the Wind-down Plan; (2) identification of the Transferee and information regarding the transaction by which the transfer of NSCC's business would be effected; (3) the Transfer Time, Last Transaction Acceptance Date, and Last Settlement Date; and (4) identification

of Eligible Members and Eligible Limited Members, and the critical and non-critical services that would be transferred to the Transferee at the Transfer Time, as well as those Non-Eligible Members and Non-Eligible Limited Members (as defined in the Proposed Rule), and any non-critical services that would not be included in the transfer. NSCC would also make available the rules and procedures and membership agreements of the Transferee.

*Transfer of Membership.* The proposed Wind-down Rule would address the expected transfer of NSCC's membership to the Transferee, which NSCC would seek to effectuate by entering into an arrangement with a Failover Transferee, or by using commercially reasonable efforts to enter into such an arrangement with a Third Party Transferee. Therefore, the Wind-down Rule would provide Members, Limited Members and Settling Banks with notice that, in connection with the implementation of the Wind-down Plan and with no further action required by any party, (1) their membership with NSCC would transfer to the Transferee, (2) they would become party to a membership agreement with such Transferee, and (3) they would have all of the rights and be subject to all of the obligations applicable to their membership status under the rules of the Transferee. These provisions would not apply to any Member or Limited Member that is either in default of an obligation to NSCC or has provided notice of its election to withdraw from membership. Further, the proposed Wind-down Rule would make clear that it would not prohibit (1) Members and Limited Members that are not transferred by operation of the Wind-down Rule from applying for membership with the Transferee, or

(2) Members, Limited Members, and Settling Banks that would be transferred to the Transferee from withdrawing from membership with the Transferee.[56]

*Comparability Period.* The proposed automatic mechanism for the transfer of NSCC's membership is intended to provide NSCC's membership with continuous access to critical services in the event of NSCC's wind-down, and to facilitate the continued prompt and accurate clearance and settlement of securities transactions. Further to this goal, the proposed Wind-down Rule would provide that NSCC would enter into arrangements with a Failover Transferee, or would use commercially reasonable efforts to enter into arrangements with a Third Party Transferee, providing that, in either case, with respect to the critical services and any non-critical services that are transferred from NSCC to the Transferee, for at least a period of time to be agreed upon ("Comparability Period"), the business transferred from NSCC to the Transferee would be operated in a manner that is comparable to the manner in which the business was previously operated by NSCC. Specifically, the proposed Wind-down Rule would provide that: (1) the rules of the Transferee and terms of membership agreements would be comparable in substance and effect to the analogous Rules and membership agreements of NSCC; (2) the rights and obligations of any Members, Limited Members and Settling Banks that are transferred to the Transferee would be comparable in substance and effect to their rights and obligations as to NSCC; and (3) the Transferee would operate the transferred business and provide any services that are transferred in a comparable manner to which

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[56] The Members and Limited Members whose membership is transferred to the Transferee pursuant to the proposed Wind-down Rule would submit transactions to be processed and settled subject to the rules and procedures of the Transferee, including any applicable margin charges or other financial obligations.

such services were provided by NSCC. The purpose of these provisions and the intended effect of the proposed Wind-down Rule is to facilitate a smooth transition of NSCC's business to a Transferee and to provide that, for at least the Comparability Period, the Transferee (1) would operate the transferred business in a manner that is comparable in substance and effect to the manner in which the business was operated by NSCC, and (2) would not require sudden and disruptive changes in the systems, operations and business practices of the new members of the Transferee.

*Subordination of Claims Provisions and Miscellaneous Matters.* The proposed Wind-down Rule would also include a provision addressing the subordination of unsecured claims against NSCC of Members and Limited Members who fail to participate in NSCC's recovery efforts (*i.e.,* such firms are delinquent in their obligations to NSCC or elect to retire from NSCC in order to minimize their obligations with respect to the allocation of losses, pursuant to the Rules). This provision is designed to incentivize Members to participate in NSCC's recovery efforts.[57]

The proposed Wind-down Rule would address other ex-ante matters including provisions providing that Members, Limited Members and Settling Banks (1) will assist and cooperate with NSCC to effectuate the transfer of NSCC's business to a Transferee, (2) consent to the provisions of the rule, and (3) grant NSCC power of attorney to execute and deliver on their behalf documents and instruments that may be requested by the

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[57] Nothing in the proposed Wind-down Rule would seek to prevent a Member, Limited Member or Settling Bank that retired its membership at NSCC from applying for membership with the Transferee. Once its NSCC membership is terminated, however, such firm would not be able to benefit from the membership assignment that would be effected by this proposed Wind-down Rule, and it would have to apply for membership directly with the Transferee, subject to its membership application and review process.

Transferee. Finally, the Proposed Rule would include a limitation of liability for any actions taken or omitted to be taken by NSCC pursuant to the Proposed Rule. The purpose of the limitation of liability is to facilitate and protect NSCC's ability to act expeditiously in response to extraordinary events. As noted, such limitation of liability would be available only following triggering of the Wind-down Plan. In addition, and as a separate matter, the limitation of liability provides Members with transparency for the unlikely situation when those extraordinary events could occur, as well supporting the legal framework within which NSCC would take such actions. These provisions, collectively, are designed to enable NSCC to take such acts as the Board determines necessary to effectuate an orderly transfer and wind-down of its business should recovery efforts prove unsuccessful.

Rule 60 (Market Disruption and Force Majeure)

The proposed Rule 60 ("Force Majeure Rule") would address NSCC's authority to take certain actions upon the occurrence, and during the pendency, of a "Market Disruption Event," as defined therein. The Proposed Rule is designed to clarify NSCC's ability to take actions to address extraordinary events outside of the control of NSCC and of its membership, and to mitigate the effect of such events by facilitating the continuity of services (or, if deemed necessary, the temporary suspension of services). To that end, under the proposed Force Majeure Rule, NSCC would be entitled, during the pendency of a Market Disruption Event, to (1) suspend the provision of any or all services, and (2) take, or refrain from taking, or require Members and Limited Members to take, or refrain from taking, any actions it considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of NSCC's services as may be practicable.

The proposed Force Majeure Rule would identify the events or circumstances that would be considered a "Market Disruption Event," including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which NSCC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems. The proposed Force Majeure Rule would define the governance procedures for how NSCC would determine whether, and how, to implement the provisions of the rule. A determination that a Market Disruption Event has occurred would generally be made by the Board, but the Proposed Rule would provide for limited, interim delegation of authority to a specified officer or management committee if the Board would not be able to take timely action. In the event such delegated authority is exercised, the proposed Force Majeure Rule would require that the Board be convened as promptly as practicable, no later than five Business Days after such determination has been made, to ratify, modify, or rescind the action. The proposed Force Majeure Rule would also provide for prompt notification to the Commission, and advance consultation with Commission staff, when practicable, including notification when an event is no longer continuing and the relevant actions are terminated. The Proposed Rule would require Members and Limited Members to notify NSCC immediately upon becoming aware of a Market Disruption Event, and, likewise, would require NSCC to notify Members and Limited Members if it has triggered the Proposed Rule and of actions taken or intended to be taken thereunder.

Finally, the Proposed Rule would address other related matters, including a limitation of liability for any failure or delay in performance, in whole or in part, arising out of the Market Disruption Event. The purpose of the limitation of liability would be similar to the purpose of the analogous provision in the proposed Wind-down Rule, which is to facilitate and protect NSCC's ability to act expeditiously in response to extraordinary events.

Proposed Change to the Rule Numbers

In order to align the order of the Proposed Rules with the order of comparable rules in the rulebooks of the other Clearing Agencies, NSCC is also proposing to re-number the current Rule 42 (Wind-down of a Member, Fund Member or Insurance Carrier/Retirement Services Member) to Rule 40, which is currently reserved for future use, as shown on Exhibit 5b, hereto.

(a) Statutory Basis

NSCC believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes that the R&W Plan, each of the Proposed Rules, and the proposed change to Rule numbers are consistent with Section 17A(b)(3)(F) of the Act,[58] the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad-22(e)(3)(ii) under the Act,[59] and the R&W Plan is consistent with Rule 17Ad-22(e)(15)(ii) under the Act,[60] for the reasons described below.

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[58] 15 U.S.C. 78q-1(b)(3)(F).

[59] 17 CFR 240.17Ad-22(e)(3)(ii).

[60] Id. at 240.17Ad-22(e)(15)(ii).

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of NSCC be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.[61] The Recovery Plan and the proposed Force Majeure Rule would promote the prompt and accurate clearance and settlement of securities transactions by providing NSCC with a roadmap for actions it may employ to mitigate losses, and monitor and, as needed, stabilize, its financial condition, which would allow it to continue its critical clearance and settlement services in stress situations. Further, as described above, the Recovery Plan is designed to identify the actions and tools NSCC may use to address and minimize losses to both NSCC and Members. The Recovery Plan and the proposed Force Majeure Rule would provide NSCC's management and the Board with guidance in this regard by identifying the indicators and governance around the use and application of such tools to enable them to address stress situations in a manner most appropriate for the circumstances. Therefore, the Recovery Plan and the proposed Force Majeure Rule would also contribute to the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible by enabling actions that would address and minimize losses.

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[61] 15 U.S.C. 78q-1(b)(3)(F).

The Wind-down Plan and the proposed Corporation Default Rule and Wind-down Rule, which would both facilitate the implementation of the Wind-down Plan, would also 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 NSCC or for which it is responsible. The Wind-down Plan and the proposed Corporation Default Rule and Wind-down Rule would collectively establish a framework for the transfer and orderly wind-down of NSCC's business. These proposals would establish clear mechanisms for the transfer of NSCC's critical services and membership, and for the treatment of open, guaranteed CNS transactions in the event of NSCC's default. By doing so, the Wind-down Plan and these Proposed Rules are designed to facilitate the continuity of NSCC's critical services and enable Members and Limited Members to maintain access to NSCC's services through the transfer of its membership in the event NSCC defaults or the Wind-down Plan is triggered by the Board. Therefore, by facilitating the continuity of NSCC's critical clearance and settlement services, NSCC believes the proposals would promote the prompt and accurate clearance and settlement of securities transactions. Further, by creating a framework for the transfer and orderly wind-down of NSCC's business, NSCC believes the proposals would enhance the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.

Finally, the proposed change to the Rule numbers would align the order of the Proposed Rules with the order of comparable rules in the rulebooks of the other Clearing Agencies. Therefore, NSCC believes the proposed change would create ease of reference, particularly for Members that are also participants of the other Clearing

Agencies, and, as such, would assist in promoting the prompt and accurate clearance and settlement of securities transactions.

Therefore, NSCC believes the R&W Plan, each of the Proposed Rules, and the proposed change to Rule numbers are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[62]

Rule 17Ad-22(e)(3)(ii) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[63] The R&W Plan and the Proposed Rules are designed to meet the requirements of Rule 17Ad-22(e)(3)(ii).[64]

The R&W Plan would be maintained by NSCC in compliance with Rule 17Ad-22(e)(3)(ii) in that it provides plans for the recovery and orderly wind-down of NSCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described above.[65] Specifically, the Recovery Plan would define the risk management activities, stress conditions and indicators, and tools that NSCC may use to address stress scenarios that could eventually prevent it from being able to provide its

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62 Id.

63 17 CFR 240.17Ad-22(e)(3)(ii).

64 Id.

65 Id.

critical services as a going concern. Through the framework of the Crisis Continuum, the Recovery Plan would address measures that NSCC may take to address risks of credit losses and liquidity shortfalls, and other losses that could arise from a Member default. The Recovery Plan would also address the management of general business risks and other non-default risks that could lead to losses.

The Wind-down Plan would be triggered by a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning NSCC to viability as a going concern. Once triggered, the Wind-down Plan would set forth clear mechanisms for the transfer of NSCC's membership and business, and would be designed to facilitate continued access to NSCC's critical services and to minimize market impact of the transfer. By establishing the framework and strategy for the execution of the transfer and wind-down of NSCC in order to facilitate continuous access to NSCC's critical services, the Wind-down Plan establishes a plan for the orderly wind-down of NSCC. Therefore, NSCC believes the R&W Plan would provide plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, and, as such, meets the requirements of Rule 17Ad-22(e)(3)(ii).[66]

As described in greater detail above, the Proposed Rules are designed to facilitate the execution of the R&W Plan, provide Members and Limited Members with transparency regarding the material provisions of the Plan, and provide NSCC with a

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[66] Id.

legal basis for implementation of those provisions. As such, NSCC also believes the Proposed Rules meet the requirements of Rule 17Ad-22(e)(3)(ii).[67]

NSCC has evaluated the recovery tools that would be identified in the Recovery Plan and has determined that these tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to NSCC's Members to manage the risks they present. The recovery tools, as outlined in the Recovery Plan and in the proposed Force Majeure Rule, provide NSCC with a comprehensive set of options to address its material risks and support the resiliency of its critical services under a range of stress scenarios. NSCC also believes the recovery tools are effective, as NSCC has both legal basis and operational capability to execute these tools in a timely and reliable manner. Many of the recovery tools are provided for in the Rules; Members are bound by the Rules through their membership agreements with NSCC, and the Rules are adopted pursuant to a framework established by Rule 19b-4 under the Act,[68] providing a legal basis for the recovery tools found therein. Other recovery tools have legal basis in contractual arrangements to which NSCC is a party, as described above. Further, as many of the tools are embedded in NSCC's ongoing risk management practices or are embedded into its predefined default-management procedures, NSCC is able to execute these tools, in most cases, when needed and without material operational or organizational delay.

The majority of the recovery tools are also transparent, as they are, or are proposed to be, included in the Rules, which are publicly available. NSCC believes the

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67 Id.

68 Id. at 240.19b-4.

recovery tools also provide appropriate incentives to the Members, as they are designed to control the amount of risk they present to NSCC's clearance and settlement system. Members' financial obligations to NSCC, particularly their Required Deposits to the Clearing Fund, are measured by the risk posed by the Members' activity in NSCC's systems, which incentivizes them to manage that risk which would correspond to lower financial obligations. Finally, NSCC's Recovery Plan provides for a continuous evaluation of the systemic consequences of executing its recovery tools, with the goal of minimizing their negative impact. The Recovery Plan would outline various indicators over a timeline of increasing stress, the Crisis Continuum, with escalation triggers to NSCC management or the Board, as appropriate. This approach would allow for timely evaluation of the situation and the possible impacts of the use of a recovery tool in order to minimize the negative effects of the stress scenario. Therefore, NSCC believes that the recovery tools that would be identified and described in its Recovery Plan, including the authority provided to it in the proposed Force Majeure Rule, would meet the criteria identified within guidance published by the Commission in connection with the adoption of Rule 17Ad-22(e)(3)(ii).[69]

Therefore, NSCC believes the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad-22(e)(3)(ii).[70]

Rule 17Ad-22(e)(15)(ii) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient LNA to cover potential

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69 Supra note 46.

70 17 CFR 240.17Ad-22(e)(3)(ii).

general business losses so that NSCC can continue operations and services as a going concern if those losses materialize, including by holding LNA equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency.[71] While the Capital Policy addresses how NSCC holds LNA in compliance with these requirements, the Wind-down Plan would include an analysis that would estimate the amount of time and the costs to achieve a recovery or orderly wind-down of NSCC's critical operations and services, and would provide that the Board review and approve this analysis and estimation annually. The Wind-down Plan would also provide that the estimate would be the "Recovery/Wind-down Capital Requirement" under the Capital Policy. Under that policy, the General Business Risk Capital Requirement, which is the sufficient amount of LNA that NSCC should hold to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize, is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement. Therefore, NSCC believes the R&W Plan, as it interrelates with the Capital Policy, is consistent with Rule 17Ad-22(e)(15)(ii).[72]

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe the proposal would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the

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[71] Id. at 240.17Ad-22(e)(15)(ii).

[72] Id.

Act.[73] The proposal would apply uniformly to all Members and Limited Members. NSCC does not anticipate that the proposal would affect its day-to-day operations under normal circumstances, or in the management of a typical Member default scenario or non-default event. NSCC is not proposing to alter the standards or requirements for becoming or remaining a Member, or otherwise using its services. NSCC also does not propose to change its methodology for calculation of margin or Clearing Fund contributions. The proposal is intended to (1) address the risk of loss events and identify the tools and resources available to it to withstand and recover from such events, so that it can restore normal operations, and (2) provide a framework for its orderly wind-down and the transfer of its business in the event those recovery tools do not restore NSCC to financial viability, as described herein.

The R&W Plan and each of the Proposed Rules have been developed and documented in order to satisfy applicable regulatory requirements, as discussed above.

With respect to the Recovery Plan, the proposal generally reflects NSCC's existing tools and existing internal procedures. Existing tools that would have a direct impact on the rights, responsibilities or obligations of Members are reflected in the existing Rules or are proposed to be included in the Rules. Accordingly, the Recovery Plan and the proposed Force Majeure Rule are intended to provide a roadmap, define the strategy and identify the tools available to NSCC in connection with its recovery efforts. By proposing to enhance NSCC's existing internal management and its regulatory compliance related to its recovery efforts, NSCC does not believe the Recovery Plan or

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[73] 15 U.S.C. 78q-1(b)(3)(I).

the proposed Force Majeure Rule would have any impact, or impose any burden, on competition.

With respect to the Wind-down Plan, the proposed Corporation Default Rule, and the proposed Wind-down Rule, which facilitate the execution of the Wind-down Plan, the proposal would operate to effect the transfer of all eligible Members and Limited Members to the Transferee, and would not prohibit any market participant from either bidding to become the Transferee or from applying for membership with the Transferee. The proposal also would not prohibit any Member or Limited Member from withdrawing from NSCC prior to the Transfer Time, as is permitted under the Rules today, or from applying for membership with the Transferee. Therefore, as the proposal would treat each similarly situated Member identically under the Wind-down Plan and under these Proposed Rules, NSCC does not believe the Wind-down Plan, the proposed Corporation Default Rule, or the proposed Wind-down Rule would have any impact, or impose any burden, on competition.

NSCC does not believe that the proposed change to the Rule numbers would have any impact on competition because this proposed change is technical in nature and would not change NSCC's current practices or the rights or obligations of Members

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

While NSCC has not solicited or received any written comments relating to this proposal, NSCC has conducted outreach to Members in order to provide them with notice of the proposal. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the clearing agency consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Proposed Rule Change is consistent with the Act. 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-2017-017 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NSCC-2017-017. 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-2017-017 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[74]

Secretary

[74] 17 CFR 200.30-3(a)(12).

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**EXHIBIT 5b**

**NATIONAL SECURITIES CLEARING CORPORATION**

**RULES & PROCEDURES**

TEXT OF PROPOSED RULE CHANGE

**Bold and underlined text** indicates proposed added language

~~**Bold and strikethrough text**~~ indicates proposed deleted language

RULE 40. (~~RULE NUMBER RESERVED FOR FUTURE USE~~**WIND-DOWN OF A MEMBER, FUND MEMBER OR INSURANCE CARRIER/RETIREMENT SERVICES MEMBER**)

**When a Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member notifies the Corporation that it intends to wind down its activities, the Corporation may, in its sole discretion, in order to protect itself and its participants, determine that such Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member is a "Wind-Down Member". In that event and, without limiting any other rights of the Corporation under these Rules and Procedures, the Corporation may impose conditions on, or take actions with respect to, the Wind-Down Member as provided below.**

**As soon as practicable after the Corporation determines that a Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member is a Wind-Down Member, the Corporation shall notify the Wind-Down Member, all other participants and the SEC of such determination.**

**The Corporation may, in its discretion, impose conditions on, or take actions with respect to, the Wind-Down Member as appropriate to mitigate risk the Corporation perceives may be presented by the Wind-Down Member, including but not limited to, the following:**

**(i) Permitting the Wind-Down Member to submit to the Corporation only transactions that serve to support the wind-down;**

**(ii) Permitting the Wind-Down Member to continue use of one or more of the Corporation's services, notwithstanding that it may not meet some or all of the financial or operational requirements for continuance as a Member or Limited Member, as applicable;**

**(iii) Restricting or modifying the Wind-Down Member's use of any or all of the Corporation's services (whether generally, or with respect to certain transactions);**

**(iv) Requiring additional assurances of the financial responsibility or operational capability of the Wind-Down Member through, for example, submission of a guaranty of the Wind-Down Member's obligations to the Corporation by an entity acceptable to the Corporation and/or additional reporting by the Wind-Down Member;**

**(v) Agreeing to complete one or more trades to which the Wind-Down Member is a party prior to the time the Corporation's guaranty otherwise would become effective pursuant to these Rules and Procedures;**

**(vi) Requiring the Wind-Down Member to post increased Clearing Fund deposits and/or to post its Required Deposit all in cash or in proportions of cash, qualifying bonds and eligible Letters of Credit different from those permitted under Rule 4;**

**(vii) Prohibiting the Wind-Down Member from withdrawing Clearing Fund on deposit in excess of its Required Deposit;**

**(viii) Calculating the Required Deposit of the Wind-Down Member in a manner different from the applicable formulae provided in the Procedures, in order to more appropriately reflect the risk presented by the Wind-Down Member to the Corporation, such as for example, not applying certain components of such calculation; or**

**(ix) Liquidating by buying-in or selling-out, as applicable, any open positions of the Wind-Down Member, for the benefit of such Wind-Down Member with any profit or loss resulting therefrom being debited or credited, as applicable, to the settlement account of the Wind-Down Member.**

**If the Corporation takes, or mandates, any action pursuant to this Rule, the Corporation shall, as soon as practicable thereafter, notify the SEC and such other participants as it deems proper due to the nature of such action.**

**Notwithstanding the foregoing, the Corporation shall not be restricted from exercising any of its rights in these Rules or in any agreements between itself and the Wind-Down Member at any time, including the Corporation's right at any time to cease to act for the Wind-Down Member pursuant to Rule 46.**

RULE 41. (~~RULE NUMBER RESERVED FOR FUTURE USE~~**CORPORATION DEFAULT**)

**SEC. 1. If a "Corporation Default" occurs pursuant to Section 2 below, all CNS Transactions which have been guaranteed but have not yet settled, and all obligations and related rights arising thereunder which have been assigned to and assumed by the Corporation pursuant to these Rules, shall be immediately terminated, and the Board shall determine a single net amount owed by or to each Member with respect to such CNS Transactions by applying the valuation and netting procedures set forth in Section 3 of this Rule 41 below. Notwithstanding the foregoing, (a) the occurrence of a Corporation Default shall not affect the rights and obligations of Members party to Balance Orders that they would otherwise have on account of such transactions under these Rules and applicable law; and (b) the treatment of any pending non-guaranteed transactions shall be determined in accordance with the provisions of Rule 42 (Wind-down of the Corporation).**

**SEC. 2. Certain Definitions. For purposes of this Rule 41:**

**(a) Notwithstanding anything to the contrary in the Rules, the following events shall constitute a "Corporation Default":**

**(i) Failure by the Corporation to make, when due, any undisputed payment or delivery to a Member required to be made by it under and in accordance with these Rules and such failure is not remedied within 7 days after notice of such failure is given to the Corporation by the affected Member; *provided* that this clause (i) shall not apply to (A) obligations of the Corporation to Wind-Down Members, or Members for whom the Corporation has otherwise ceased to act pursuant to Rule 46 (including an insolvent Member), (B) any payment or delivery which the Corporation satisfies by alternate means as provided in these Rules, or (C) any obligation of the Corporation that is not a payment or delivery obligation of the Corporation to a Member under these Rules; or**

**(ii) The Corporation (A) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (B) institutes a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or presents a petition for its winding-up or liquidation or makes a general assignment for the benefit of creditors; (C) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is**

**presented for its winding-up or liquidation and, in each case, such proceeding or petition results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or (D) seeks or becomes subject to the appointment of a receiver, trustee, or other similar official pursuant to the federal securities laws or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act for it or for all or substantially all its assets.**

**(b) the "CNS Position" of a Member in any CNS Security shall be equal to the net of the Member's unsettled Long Positions and Short Positions in such security as of the close of Business on the Default Date (and, for the avoidance of doubt, this shall include both CNS positions that have not yet passed Settlement Date and fail positions);**

**(c) "Default Date" means the date on which the event that constitutes the Corporation Default occurs; and**

**(d) "Net Contract Value" means, for each Member's CNS Position in a given CNS Security, the net of the Member's (x) contract price for such net position that, as of the Default Date, has not yet passed Settlement Date, and (y) the Current Market Price in the CNS System on the Default Date for its fail positions, in each case as shown on the applicable reports issued by the Corporation to the Member in accordance with the Procedures applicable to the CNS System.**

**SEC. 3 Valuation and Calculation of Claims.**

**(a) As promptly as practicable, but in any event within 45 days after the Default Date, the Corporation shall fix a dollar amount to be paid or received by each Member to or from the Corporation in connection with the termination of a CNS Transaction, after taking into account all of the applicable following netting and offsetting:**

**(i) The Corporation shall value all CNS Positions by using the Current Market Price, as determined for the CNS System, as of the close of business on the next Business Day immediately following the Default Date, so that each Member shall have the same per share price for a given security in which it had an open CNS Position (the resulting value referred to as the "CNS Market Value");**

**(ii) For each Member, the Net Contract Value of its terminated CNS Positions shall be determined as provided in**

**subsection 2(d) above; which amount shall be positive or negative, as applicable;**

**(iii) To determine each Member's CNS Close-out Value, (x) the Net Contract Value for each CUSIP shall be subtracted from the CNS Market Value for such CUSIP, and (y) the resulting difference for all CUSIPS in which the Member had a CNS Position shall be summed, and the resulting amount shall be positive or negative, as applicable.**

**(iv) The CNS Close-out Value shall be further netted and offset against any other amounts, or the value of any property, as valued by the Corporation, that may be due to, or owing from, the Member under these Rules, taking into account the application of any provisions of Rule 4 relating to loss allocation, including in the event that the Member is in default of its obligations to deliver funds to the Corporation, or the Corporation has prior to the Default Date Ceased to Act for the Member.**

**(b) The Board shall notify each Member of the CNS Close-out Value, taking into account the netting and offsetting provided for in subsections 3(a)(i) to (iv) above. Members who have been notified that they owe an amount to the Corporation shall pay that amount on or prior to the date specified by the Board, subject to any applicable setoff rights. Members who have a net claim against the Corporation shall be entitled to payment thereof along with other Members' and any other creditors' claims pursuant to the underlying contracts with respect thereto, these Rules and applicable law. For the avoidance of doubt, nothing herein shall limit the rights of the Corporation upon a Member default (including following a Corporation Default), including any rights under any Clearing Agency Cross-Guaranty Agreement or otherwise.**

**SEC. 4. Interpretation in Relation to the Federal Deposit Insurance Corporation Act of 1991:**

**The Corporation and the Members intend that these Rules be interpreted in relation to certain terms (identified below) that are defined in the Federal Deposit Insurance Corporation Act of 1991 ("FDICIA"), as amended, as follows:**

**The Corporation is a "clearing organization";**

**Any obligation of a Member or the Corporation to make any payments to the other is a "covered clearing obligation" and a "covered contractual payment obligation";**

**An entitlement of a Member or the Corporation to receive a payment from the other is a "covered contractual payment entitlement";**

**The Corporation and each Member is a "member" of the "clearing organization";**

**The amount by which the covered contractual payment entitlements of a Member or the Corporation exceed the covered contractual payment obligations of such Member or the Corporation after netting pursuant to Rule 18 or this Rule 41 is its "net entitlement";**

**The amount by which the covered contractual payment obligations of a Member or the Corporation exceed the covered contractual payment entitlements of such Member or the Corporation after netting under a netting pursuant to Rule 18 or this Rule 41 is its "net obligation"; and**

**These Rules, together with all other agreements between the Corporation and a Clearing Member, are a "netting contract", the margin, Clearing Fund and other provisions of these Rules granting an interest in any funds or property of a member to the Corporation constitute a "security agreement or arrangement or other credit enhancement" relating to such netting contract and the close-out process in Rule 18 or this Rule 41 constitutes the "terminat[ion], liquidat[ion], accelerat[ion], and nett[ing]" of obligations.**

RULE 42. (~~WIND DOWN OF A MEMBER, FUND MEMBER OR INSURANCE CARRIER/RETIREMENT SERVICES MEMBER~~**WIND-DOWN OF THE CORPORATION**)

***Section 1.*** **Defined Terms**

**(a)** **For purposes of this Rule 42:**

**"Bridge Entity" has the meaning given to such term in the definition of "Transferee" in this Section 1(a).**

**"Business" means the Critical Services and any Non-Critical Services of the Corporation included in a Transfer.**

**"Comparability Period" means a period of time following the Transfer, to be agreed between the Corporation and a Transferee, during which the Business transferred from the Corporation to the Transferee shall be operated by the Transferee in a manner comparable to the manner in which the Business was previously operated by the Corporation, as more specifically set forth in Section 9 of this Rule 42.**

**"Corporation Default Rule" means Rule 41 of the Corporation.**

**"Critical Services" means the services of the Corporation described in the Rules and Procedures of the Corporation that have been identified as critical services in the Recovery and Wind-down Plan.**

**"Delinquent Limited Member" means a Limited Member of the Corporation that is delinquent in the performance of any of its obligations to the Corporation (as determined by the Corporation).**

**"Delinquent Member" means a Member of the Corporation that is delinquent in the performance of any of its obligations to the Corporation (as determined by the Corporation).**

**"DTCC" means The Depository Trust & Clearing Corporation.**

**"Eligible Limited Member" means a Limited Member of the Corporation other than a Non-Eligible Limited Member.**

**"Eligible Member" means a Member of the Corporation other than a Non-Eligible Member.**

**"Failover Entity" has the meaning given to such term in the definition of "Transferee" in this Section 1(a).**

**“Guaranteed Transaction” means a transaction in CNS Securities or Balance Order Securities that is processed through the facilities of the Corporation and guaranteed by the Corporation.**

**“Last Settlement Date” has the meaning given to such term in Section 2(c)(3) of this Rule 42.**

**“Last Transaction Acceptance Date” has the meaning given to such term in Section 2(c)(2) of this Rule 42.**

**“Limited Member” means a Limited Member of the Corporation (other than a Settling Bank Only Member or an AIP Settling Bank Only Member) or a Limited Member of the Transferee (other than a Settling Bank Only Member or an AIP Settling Bank Only Member), as the context requires.**

**“Limited Member Agreement” means the form of agreement between a Limited Member and the Corporation or between a Limited Member and the Transferee, as the context requires, providing, *inter alia*, for the Limited Member to be bound by the Rules and Procedures of the Corporation or the Rules and Procedures of the Transferee, as applicable to such Limited Member.**

**“Member” means a Member of the Corporation (other than a Settling Bank or AIP Settling Bank) or a Member of the Transferee (other than a Settling Bank or AIP Settling Bank), as the context requires.**

**“Member Agreement” means the form of agreement between a Member and the Corporation or between a Member and the Transferee, as the context requires, providing, *inter alia*, for the Member to be bound by the Rules and Procedures of the Corporation or the Rules and Procedures of the Transferee, as applicable to such Member.**

**“Non-Critical Services” means the services of the Corporation described in the Rules and Procedures of the Corporation other than the Critical Services.**

**“Non-Eligible Limited Member” means a Limited Member of the Corporation that is a Delinquent Limited Member or Withdrawing Limited Member.**

**“Non-Eligible Member” means a Member of the Corporation that is a Delinquent Member or Withdrawing Member.**

**“Non-Guaranteed Transaction” means any transaction that is processed through the facilities of the Corporation other than a Guaranteed Transaction.**

**“Recovery and Wind-down Plan” means the plan for the recovery and orderly wind-down of the Corporation necessitated by credit losses, liquidity shortfalls, losses from general business risk or any other losses, adopted by the Corporation pursuant to Rule 17Ad-22(e)(3)(ii) under the Securities Exchange Act of 1934, as amended.**

**“Recovery Plan” means the portion of the Recovery and Wind-down Plan addressing recovery.**

**“Risk Reducing Transaction” means a Guaranteed Transaction that offsets one or more other Guaranteed Transactions, and thereby reduces the potential exposure of the Corporation with respect to such Guaranteed Transactions.**

**“Rules and Procedures” means the Rules and Procedures of the Corporation or the Rules and Procedures of the Transferee, as the context requires.**

**“Settling Bank” means a Settling Bank, Settling Bank Only Member, AIP Settling Bank or AIP Settling Bank Only Member for Members and Limited Members of the Corporation or a Settling Bank, Settling Bank Only Member, AIP Settling Bank or AIP Settling Bank Only Member for Members and Limited Members of the Transferee, as the context requires.**

**“Settling Bank Agreement” means the form of agreement between a Settling Bank and the Corporation or between a Settling Bank and the Transferee, as the context requires, providing, *inter alia*, for the Settling Bank to be bound by the Rules and Procedures of the Corporation or the Rules and Procedures of the Transferee, as applicable to such Settling Bank.**

**“Third Party Entity” has the meaning given to such term in the definition of “Transferee” in this Section 1(a).**

**“Transfer” means a transfer of the Business of the Corporation pursuant to the Wind-down Plan.**

**“Transferee” means an entity to which the Business of the Corporation is transferred pursuant to the Wind-down Plan, and may include (i) a failover entity established by DTCC (a “Failover Entity”), (ii) a then-existing or newly-established third party entity (a “Third Party Entity”) or (iii) a bridge entity formed to operate the Business on an interim basis (a “Bridge Entity”). The Transferee shall be an entity that is legally, financially and operationally qualified to continue to operate the Business that is to be transferred from the Corporation to the Transferee.**

**"Transferee Documents" means the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling Bank Agreement of the Transferee.**

**"Transfer Notice" has the meaning given to such term in Section 3 of this Rule 42.**

**"Transfer Time" has the meaning given to such term in Section 2(c)(1) of this Rule 42.**

**"Wind-down Plan" means the portion of the Recovery and Wind-down Plan addressing wind-down.**

**"Withdrawing Limited Member" means a Limited Member of the Corporation that has given notice to the Corporation of its election to withdraw as a Limited Member but that, at the Transfer Time, has not yet ceased to be a Limited Member (as determined by the Corporation).**

**"Withdrawing Member" means a Member of the Corporation that has given notice to the Corporation of its election to withdraw as a Member but that, at the Transfer Time, has not yet ceased to be a Member (as determined by the Corporation).**

**(b)** **Capitalized terms that are used in this Rule 42 but not defined in Section 1(a) above shall have the meanings given to such terms in other Rules and Procedures of the Corporation.**

***Section 2.*** **Initiation of Wind-down Plan**

**(a)** **The Board of Directors may authorize the initiation of the Wind-down Plan and a transfer of the Business from the Corporation to a Transferee if the Board of Directors determines, in the exercise of its business judgment and subject to its fiduciary duties:**

**(1)** **that the application of some or all of the recovery tools set forth in the Recovery Plan, necessitated by credit losses, liquidity shortfalls, losses from general business risk or any other losses:**

**A.** **has not restored the Corporation to viability as a going concern, able to continue to provide its Critical Services to Members and Limited Members of the Corporation in a safe and efficient manner; or**

**B.** **will not likely restore the Corporation to viability as a going concern, able to continue to provide its Critical**

**Services to Members and Limited Members of the Corporation in a safe and efficient manner; and**

**(2) that the implementation of the Wind-down Plan and a Transfer of the Business from the Corporation to a Transferee is in the best interests of the Corporation, its shareholders and creditors, Members and Limited Members and the US financial markets.**

**(b) The Board of Directors shall identify:**

**(1) the Critical Services and any Non-Critical Services that shall be transferred from the Corporation to the Transferee at the Transfer Time; and**

**(2) any Non-Critical Services that shall not be transferred from the Corporation to the Transferee.**

**The Critical Services and any Non-Critical Services that are transferred from the Corporation to the Transferee at the Transfer Time shall be provided by the Transferee following the Transfer Time. Any Non-Critical Services that are not transferred from the Corporation to the Transferee shall be terminated at the Transfer Time.**

**(c) The Board of Directors shall establish:**

**(1) the date and time (the "Transfer Time") of the Transfer;**

**(2) the last day that transactions may be submitted to the Corporation for processing (the "Last Transaction Acceptance Date"); and**

**(3) the last day that transactions submitted to the Corporation for processing will be settled (the "Last Settlement Date").**

**The Corporation shall not accept any transactions (i) for processing after the Last Transaction Acceptance Date or (ii) which have a designated Settlement Date that occurs after the Last Settlement Date. All transactions to be processed and/or settled after the Transfer Time shall be submitted to the Transferee in accordance with the Rules and Procedures of the Transferee, and the Corporation shall have no responsibility for such transactions.**

**(d) To the extent that the Board of Directors deems it to be practicable based on the available resources of the Corporation, the Board of Directors may provide for pending transactions to be run off and settled prior to the Transfer Time, with the objective of facilitating the**

**settlement of transactions in the ordinary course. In furtherance of this objective, so long as a Corporation Default has not occurred, the Board of Directors may provide for how such transactions accepted by the Corporation on or prior to the Last Transaction Acceptance Date shall be processed and settled, including:**

**(1) whether such transactions must be Risk Reducing Transactions; and**

**(2) whether such transactions will be processed (i) in the ordinary course or (ii) in accordance with any special or exception processing procedures that will apply through the close of business on the Last Settlement Date.**

***Section 3.*** **Notice of Transfer of the Business**

**If the Board of Directors determines to implement a Transfer of the Business from the Corporation to a Transferee in accordance with this Rule 42 and the terms and conditions of the Wind-down Plan, the Corporation shall, in such manner as may be provided by the Rules and Procedures of the Corporation and subject to any required regulatory or judicial approval or consent:**

**(a) provide Members, Limited Members and Settling Banks with a notice (a "Transfer Notice") setting forth:**

**(1) the decision taken by the Board of Directors to Transfer the Business from the Corporation to the Transferee and a brief statement of the reasons therefor;**

**(2) the name of the Transferee and basic information about the Transferee;**

**(3) a description of the material financial and operational terms of the Transfer;**

**(4) the (i) Transfer Time, (ii) Last Transaction Acceptance Date and (iii) Last Settlement Date;**

**(5) a summary of the matters described in Sections 4 through 8 of this Rule 42;**

**(6) a list setting forth (i) which Members and Limited Members of the Corporation are Eligible Members and Limited Members and (ii) which Members and Limited Members of the Corporation are Non-Eligible Members and Limited Members; and**

**(7)** **a list setting forth (i) the Critical Services and any Non-Critical Services that will be transferred from the Corporation to the Transferee at the Transfer Time and (ii) any Non-Critical Services that will not be transferred from the Corporation to the Transferee; and**

**(b)** **make available to Members, Limited Members and Settling Banks a copy of the Transferee Documents.**

**No delay or failure on the part of the Corporation to provide a Transfer Notice or make available a copy of the Transferee Documents to any Member, Limited Member or Settling Bank shall alter the timing or effectiveness of the Transfer. The Corporation shall also furnish the Transfer Notice and a copy of the Transferee Documents to its regulators.**

***Section 4.*** **Transfer of Members, Limited Members and Settling Banks**

**Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, at the Transfer Time, by operation of this Rule 42 and with no further action required by any party:**

**(a)** **each Eligible Member of the Corporation shall become (i) a Member of the Transferee and (ii) a party to a Member Agreement with the Transferee;**

**(b)** **each Eligible Limited Member of the Corporation shall become (i) a Limited Member of the Transferee and (ii) a party to a Limited Member Agreement with the Transferee; and**

**(c)** **each Settling Bank for Members and Limited Members of the Corporation shall become (i) a Settling Bank for Members and Limited Members of the Transferee and (ii) a party to a Settling Bank Agreement with the Transferee.**

***Section 5.*** **Status of Members, Limited Members and Settling Banks**

**Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, from and after the Transfer Time:**

**(a)** **An Eligible Member of the Corporation that has become a Member of the Transferee shall have all of the rights and be subject to all of the obligations of a Member set forth in the Rules and Procedures of the Transferee, including the legal, financial, operational and collateral requirements of the Transferee applicable to such Member.**

**(b)** **An Eligible Limited Member of the Corporation that has become a Limited Member of the Transferee shall have all of the rights and be subject to all of the obligations of a Limited Member set forth in the Rules and Procedures of the Transferee, including the legal, financial and operational requirements of the Transferee applicable to such Limited Member.**

**(c)** **A Settling Bank for Members and Limited Members of the Corporation that has become a Settling Bank for Members and Limited Members of the Transferee shall have all of the rights and be subject to all of the obligations of a Settling Bank set forth in the Rules and Procedures of the Transferee, including the operational requirements of the Transferee applicable to such Settling Bank.**

***Section 6.*** **Right of Non-Eligible Members and Limited Members to Apply to the Transferee**

**Nothing contained in this Rule 42 shall:**

**(a)** **preclude a Non-Eligible Member of the Corporation from applying after the Transfer Time to become a Member of the Transferee in accordance with such eligibility requirements and procedures as may be prescribed by the Transferee, but such Non-Eligible Member shall not have the benefit of the automatic admission arrangements provided in Section 4(a) of this Rule 42; or**

**(b)** **preclude a Non-Eligible Limited Member of the Corporation from applying after the Transfer Time to become a Limited Member of the Transferee in accordance with such eligibility requirements and procedures as may be prescribed by the Transferee, but such Non-Eligible Limited Member shall not have the benefit of the automatic admission arrangements set forth in Section 4(b) of this Rule 42.**

***Section 7.*** **Right to Withdraw from the Transferee**

**Nothing contained in this Rule 42 shall:**

**(a)** **preclude an Eligible Member of the Corporation that has become a Member of the Transferee pursuant to Section 4(a) of this Rule 42 from electing to withdraw as a Member from the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Transferee;**

**(b)** **preclude an Eligible Limited Member of the Corporation that has become a Limited Member of the Transferee pursuant to Section 4(b) of this Rule 42 from electing to withdraw as a Limited Member from the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Transferee; or**

**(c)** **preclude a Settling Bank for Members and Limited Members of the Corporation that has become a Settling Bank for Members and Limited Members of the Transferee pursuant to Section 4(c) of this Rule 42 from electing to withdraw as a Settling Bank from the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Transferee.**

***Section 8.*** **Disposition of Pending Transactions**

**At the Transfer Time:**

**(a)** **any pending transactions that are Guaranteed Transactions shall be treated as provided in the Corporation Default Rule; and**

**(b)** **any pending transactions that are Non-Guaranteed Transactions shall be settled by the parties outside the facilities of the Corporation, including, if agreed by the Transferee, through the facilities of the Transferee.**

***Section 9.*** **Certain Ex Ante Matters**

**Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, with respect to the Critical Services and any Non-Critical Services that are transferred from the Corporation to the Transferee, for at least the duration of the Comparability Period, in order to facilitate a smooth Transfer of the Business from the Corporation to the Transferee:**

**(a)** **the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling Bank Agreement of the Transferee shall be comparable in substance and effect to the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling Bank Agreement of the Corporation;**

**(b)** **the rights and obligations of Members, Limited Members and Settling Banks of the Transferee under the Rules and Procedures of the Transferee shall be comparable in substance and effect to the rights and obligations of Members, Limited Members and Settling Banks of the Corporation under the Rules and Procedures of the Corporation; and**

**(c)** **the Critical Services and any Non-Critical Services provided by the Transferee shall be provided in a manner that is comparable in substance and effect to the manner in which such Critical Services and Non-Critical Services were provided by the Corporation.**

***Section 10.*** **Subordination of Claims**

**In the event of any insolvency of the Corporation following the commencement of any Event Period (as defined in Rule 4), the unsecured claims (if any) of Members and Limited Members of the Corporation that failed to pay or perform any obligation to the Corporation or elected to withdraw as Members or Limited Members from and after such time shall (i) rank *pari passu* with each other and (ii) be subordinate to the claims of other unsecured creditors of the Corporation.**

***Section 11.*** **Further Assurances; Additional Powers; Miscellaneous Matters**

**(a)** **Members, Limited Members and Settling Banks of the Corporation shall assist and cooperate with the Corporation to effectuate any Transfer of the Business from the Corporation to a Transferee, including without limitation (i) by complying with the terms and conditions of this Rule 42 and their obligations hereunder and (ii) by providing the Corporation and the Transferee with such financial and operational information as they may request. The Corporation may provide to a Transferee any financial and operational information it has with respect to Members, Limited Members and Settling Banks of the Corporation as may be necessary and appropriate to effectuate an orderly Transfer of the Business from the Corporation to the Transferee.**

**(b)** **The Corporation may take such other actions and enter into such other arrangements (on behalf of itself and its Members, Limited Members and Settling Banks) as may be necessary and appropriate to effectuate an orderly Transfer of the Business from the Corporation to a Transferee, and otherwise accomplish the purposes of the Wind-down Plan.**

**(c)** **As a condition to receiving, and by virtue of accepting, the continuing benefits of being Members, Limited Members and Settling Banks of the Corporation, such Members, Limited Members and Settling Banks (i) hereby expressly agree to the arrangements set forth in this Rule 42 relating to their becoming Members, Limited Members and Settling Banks, as the case may be, of the Transferee in the circumstances described herein and (ii) hereby expressly grant to the Corporation an irrevocable power of attorney to execute and deliver on their behalf such documents and instruments as the Transferee may request for this purpose. As Members, Limited Members and Settling Banks of the Corporation, such Members, Limited Members and Settling Banks are subject to the Rules and Procedures of the Corporation.**

**(d)** **No actions taken or omitted to be taken by the Corporation pursuant to this Rule 42 shall be deemed to constitute a default by the**

**Corporation in the performance of any of its other obligations to Members, Limited Members and Settling Banks of the Corporation pursuant to any other Rules and Procedures of the Corporation.**

**(e)** **The Corporation shall have no liability to any Members, Limited Members, or Settling Banks of the Corporation for any actions taken or omitted to be taken by the Corporation pursuant to this Rule 42.**

**(f)** **The Corporation shall have no liability to any third parties, including any customers or clients of any Members, Limited Members or Settling Banks of the Corporation, for any actions taken or omitted to be taken by the Corporation pursuant to this Rule 42.**

**(g)** **In connection with the Transfer of the Business from the Corporation to the Transferee, (i) the Corporation shall assign all of its Member Agreements, Limited Member Agreements and Settling Bank Agreements to the Transferee and (ii) the Transferee shall assume such Member Agreements, Limited Member Agreements and Settling Bank Agreements.**

**(h)** **All rights of the Corporation that are not assigned to the Transferee in connection with the Transfer of the Business from the Corporation to the Transferee, including any claims of the Corporation against Members, Limited Members and Settling Banks arising at any time prior to the Transfer Time, shall remain rights of the Corporation, enforceable by the Corporation in accordance with their terms and subject to applicable law (including insolvency law).**

**(i)** **All obligations and liabilities of the Corporation that are not assigned to and assumed by the Transferee in connection with the Transfer of the Business from the Corporation to the Transferee shall remain obligations and liabilities of the Corporation, enforceable against the Corporation in accordance with their terms and subject to applicable law (including insolvency law).**

**(j)** **In the event of any conflict between the provisions of this Rule 42 and any other Rules and Procedures of the Corporation, the provisions of this Rule 42 shall prevail.**

~~**When a Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member notifies the Corporation that it intends to wind down its activities, the Corporation may, in its sole discretion, in order to protect itself and its participants, determine that such Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member is a "Wind Down Member". In that event and, without limiting any other rights of the Corporation under these**~~

~~Rules and Procedures, the Corporation may impose conditions on, or take actions with respect to, the Wind-Down Member as provided below.~~

~~As soon as practicable after the Corporation determines that a Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member is a Wind-Down Member, the Corporation shall notify the Wind-Down Member, all other participants and the SEC of such determination.~~

~~The Corporation may, in its discretion, impose conditions on, or take actions with respect to, the Wind-Down Member as appropriate to mitigate risk the Corporation perceives may be presented by the Wind-Down Member, including but not limited to, the following:~~

~~(i) Permitting the Wind-Down Member to submit to the Corporation only transactions that serve to support the wind-down;~~

~~(ii) Permitting the Wind-Down Member to continue use of one or more of the Corporation's services, notwithstanding that it may not meet some or all of the financial or operational requirements for continuance as a Member or Limited Member, as applicable;~~

~~(iii) Restricting or modifying the Wind-Down Member's use of any or all of the Corporation's services (whether generally, or with respect to certain transactions);~~

~~(iv) Requiring additional assurances of the financial responsibility or operational capability of the Wind-Down Member through, for example, submission of a guaranty of the Wind-Down Member's obligations to the Corporation by an entity acceptable to the Corporation and/or additional reporting by the Wind-Down Member;~~

~~(v) Agreeing to complete one or more trades to which the Wind-Down Member is a party prior to the time the Corporation's guaranty otherwise would become effective pursuant to these Rules and Procedures;~~

~~(vi) Requiring the Wind-Down Member to post increased Clearing Fund deposits and/or to post its Required Deposit all in cash or in proportions of cash, qualifying bonds and eligible Letters of Credit different from those permitted under Rule 4;~~

~~(vii) Prohibiting the Wind-Down Member from withdrawing Clearing Fund on deposit in excess of its Required Deposit;~~

~~(viii) Calculating the Required Deposit of the Wind-Down Member in a manner different from the applicable formulae provided in the~~

~~**Procedures, in order to more appropriately reflect the risk presented by the Wind-Down Member to the Corporation, such as for example, not applying certain components of such calculation; or**~~

~~**(ix) Liquidating by buying in or selling out, as applicable, any open positions of the Wind-Down Member, for the benefit of such Wind-Down Member with any profit or loss resulting therefrom being debited or credited, as applicable, to the settlement account of the Wind-Down Member.**~~

~~**If the Corporation takes, or mandates, any action pursuant to this Rule, the Corporation shall, as soon as practicable thereafter, notify the SEC and such other participants as it deems proper due to the nature of such action.**~~

~~**Notwithstanding the foregoing, the Corporation shall not be restricted from exercising any of its rights in these Rules or in any agreements between itself and the Wind-Down Member at any time, including the Corporation's right at any time to cease to act for the Wind-Down Member pursuant to Rule 46.**~~

RULE 60. (~~RULE NUMBER RESERVED FOR FUTURE USE~~**MARKET DISRUPTION AND FORCE MAJEURE**)

**Section 1. Market Disruption Events**

**On the happening of any one or more of the events or circumstances set out below (each a "Market Disruption Event") which, in any case, is likely to materially affect or has materially affected the business, operations, safeguarding of securities or funds, or physical functions of the Corporation, including performance by the Corporation of any obligations under these Rules & Procedures, the Corporation shall be entitled to take such action as is set out in this Rule 60:**

**(a) a general suspension or limitation of trading on the New York Stock Exchange, NASDAQ, or any other exchange or market relevant to the pricing or trading of securities cleared and settled through the Corporation;**

**(b) the declaration of a trading or banking moratorium in the United States or New York State;**

**(c) any international organization, the government of any nation, state, or territory, or any institution or agency thereof, or any self-regulatory organization taking action of a nature likely to affect the normal course of business, including performance by the Corporation of obligations under these Rules & Procedures;**

**(d) the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of any payment, bank transfer or wire, or securities settlement system;**

**(e) the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of any cash or securities depository, custodian or clearing bank, or any material variation of such depository's, custodian's or clearing bank's processing or turnaround times, whether or not occasioned by action of such depository, custodian or clearing bank; or**

**(f) any Force Majeure, which shall include (without limitation) any terrorist or other criminal action, war or hostilities between any nations, national emergency, riot, civil unrest, acts of God or the public enemy, fire or other casualty, flood, accident, disaster (including any nuclear, atomic, environmental, or natural disaster), sabotage, bomb threat, labor dispute, embargo, the unavailability, failure, malfunction, or restriction of communication, computer, or data processing systems or facilities, or of software or technology, cyber attack, lack of transportation facilities, interruption (whether partial or total) of power supplies or other utility or**

**service, or any event, situation, or circumstance beyond the reasonable control of the parties (whether or not similar to any of the foregoing), including those imminent or threatened.**

**Section 2. Powers of the Corporation**

**If the Board of Directors or any officer of the Corporation listed below determines, in its, his, or her judgment that there is a Market Disruption Event, the Corporation shall be entitled to act (or refrain from acting) as prescribed in Section 3 of this Rule 60. To the extent practicable, the determination of the existence of a Market Disruption Event, and the actions to be taken in response thereto, shall be made by the Board of Directors at a meeting where a quorum is present and acting. However, if the Corporation is unable to convene a Board meeting promptly and timely in such event, then such determination may be made by either the Chief Executive Officer, the Chief Financial Officer, the Group Chief Risk Officer, or the General Counsel, or by any management committee on which all of the foregoing officers serves (an "Officer Market Disruption Event Action"), provided that the Corporation shall convene a Board meeting as soon as practicable thereafter (and in any event within 5 business days following such determination) to ratify, modify or rescind such Officer Market Disruption Event Action.**

**Section 3. Authority to take Actions**

**Upon the determination that there is a Market Disruption Event, the Corporation shall be entitled, during the pendency of such Market Disruption Event, to:**

**(a) suspend the provision of any or all services of the Corporation; and**

**(b) take, or refrain from taking, or require Members and/or Limited Members (whether or not they are affected by the Market Disruption Event) to take or refrain from taking, any and all action which the Corporation considers appropriate to prevent, address, correct, mitigate or alleviate the event and facilitate the continuation of services as may be practicable, and, in that context, issue instructions to Members and/or Limited Members.**

**Section 4. Notifications**

**4.1 Each Member and Limited Member shall notify the Corporation immediately upon becoming aware of any Market Disruption Event.**

**4.2 The Corporation shall promptly notify Members and Limited Members of any action the Corporation takes or intends to take pursuant to Section 3 of this Rule 60.**

**4.3 The Corporation shall attempt to consult with officials of the Securities and Exchange Commission prior to the Corporation taking any action pursuant to Section 3 of this Rule 60; provided, however, that the authority contained herein shall not be conditioned by such consultation.**

**The Corporation shall advise the Securities and Exchange Commission as soon as practicable by telephone, and confirmed in writing, of any action taken by the Corporation pursuant to Section 3 of this Rule 60, and a record of such writing shall be promptly made and filed with the Corporation's records and shall be available for inspection by any Member or Limited Member during regular business hours on business days.**

**The Corporation shall also advise the Securities and Exchange Commission as soon as practicable by telephone, and confirmed in writing, at such time it determines that there is no longer a Market Disruption Event and the Corporation terminates the actions taken by the Corporation pursuant to Section 3 of this Rule 60. A record of such writing shall be promptly made and filed with the Corporation's records and shall be available for inspection by any Member or Limited Member during regular business hours on business days.**

**Section 5. Certain Miscellaneous Matters**

**(a) Without limiting any other provisions in these Rules & Procedures concerning limitations on liability, none of the Corporation, its directors, officers, employees, agents, or contractors shall be liable to a Member, Limited Member or any other person (including any customer or client thereof) for:**

**(i) any failure, hindrance, interruption or delay in performance in whole or in part of the obligations of the Corporation under the Rules or Procedures, if that failure, hindrance, interruption or delay arises out of or relates to a Market Disruption Event; or**

**(ii) any loss, liability, damage, cost or expense arising from or relating in any way to any actions taken, or omitted to be taken, pursuant to this Rule 60.**

**(b) The power of the Corporation to take any action pursuant to this Rule 60 also includes the power to repeal, rescind, revoke, amend, or vary any such action.**

**(c) The powers of the Corporation pursuant to this Rule 60 shall be in addition to, and not in derogation of, authority granted elsewhere in these Rules & Procedures to take action as specified therein.**

**(d) In the event of any conflict between the provisions of this Rule 60 and any other Rules or Procedures, the provisions of this Rule 60 shall prevail.**

| OMB APPROVAL |
| --- |
| OMB Number: 3235-0045<br>Estimated average burden hours per response.....38 |

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of * 283

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b 4

File No.* SR 2017 * 805
Amendment No. (req. for Amendments *) 1

Filing by National Securities Clearing Corporation

Pursuant to Rule 19b 4 under the Securities Exchange Act of 1934

| Initial * | Amendment * | Withdrawal | Section 19(b)(2) * | Section 19(b)(3)(A) * | Section 19(b)(3)(B) * |
| --- | --- | --- | --- | --- | --- |
| ☐ | ☑ | ☐ | ☐ | ☐ | ☐ |

| Pilot | Extension of Time Period for Commission Action * | Date Expires * |
| --- | --- | --- |
| ☐ | ☐ | |

Rule

☐ 19b 4(f)(1) ☐ 19b 4(f)(4)
☐ 19b 4(f)(2) ☐ 19b 4(f)(5)
☐ 19b 4(f)(3) ☐ 19b 4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☑

Section 806(e)(2) * ☐

Security Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

## Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

## Contact Information

Provide the name, telephone number, and e mail address of the person on the staff of the self regulatory organization prepared to respond to questions and comments on the action.

First Name * Jacqueline Last Name * Chezar

Title * Executive Director and Associate General Counsel

E mail * [redacted]

Telephone * [redacted] Fax

## Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 06/28/2018

By Nikki Poulos

(Name *)

(Title *)

Managing Director and Deputy General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

[redacted]

*Required fields are shown with yellow backgrounds and asterisks.*

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b 4 instructions please refer to the EFFS website.

| | |
|---|---|
| **Form 19b-4 Information ***<br>Add Remove View | The self regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act. |
| **Exhibit 1 - Notice of Proposed Rule Change ***<br>Add Remove View | The Notice section of this Form 19b 4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR [SRO] xx xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0 3 under the Act (17 CFR 240.0 3) |
| **Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies ***<br>Add Remove View | The Notice section of this Form 19b 4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR [SRO] xx xx). A material failure to comply with these guidelines will result in the proposed rule change, security based swap submission, or advance notice being deemed not properly filed. See also Rule 0 3 under the Act (17 CFR 240.0 3) |
| **Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**<br>Add Remove View<br>Exhibit Sent As Paper Document<br>☐ | Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G. |
| **Exhibit 3 - Form, Report, or Questionnaire**<br>Add Remove View<br>Exhibit Sent As Paper Document<br>☐ | Copies of any form, report, or questionnaire that the self regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change. |
| **Exhibit 4 - Marked Copies**<br>Add Remove View | The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working. |
| **Exhibit 5 - Proposed Rule Text**<br>Add Remove View | The self regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b 4. Exhibit 5 shall be considered part of the proposed rule change. |
| **Partial Amendment**<br>Add Remove View | If the self regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions. |

## 1. Text of the Advance Notice

(a) The advance notice of National Securities Clearing Corporation ("NSCC") proposes to (1) adopt the Recovery & Wind-down Plan of NSCC ("R&W Plan" or "Plan"), attached hereto as Exhibit 5a; and (2) amend NSCC's Rules & Procedures ("Rules")[1] in order to adopt Rule 41 (Corporation Default), Rule 42 (Wind-down of the Corporation), and Rule 60 (Market Disruption and Force Majeure) (each a "Proposed Rule" and, collectively, the "Proposed Rules"), attached hereto as Exhibit 5b. The advance notice would also propose to re-number the current Rule 42 (Wind-down of a Member, Fund Member or Insurance Carrier/Retirement Services Member) to Rule 40, which is currently reserved for future use.

The R&W Plan would be maintained by NSCC in compliance with Rule 17Ad-22(e)(3)(ii) under the Securities Exchange Act of 1934 ("Act") by providing plans for the recovery and orderly wind-down of NSCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described below.[2] The Proposed Rules are designed to (1) facilitate the implementation of the R&W Plan when necessary and, in particular, allow NSCC to effectuate its strategy for winding down and transferring its business; (2) provide Members and Limited Members with transparency around critical provisions of the R&W Plan that relate to their rights, responsibilities and obligations; and (3) provide NSCC with the legal basis to implement those provisions of the R&W Plan when necessary, as described below.

(b) Not applicable.

(c) Not applicable.

## 2. Procedures of the Self-Regulatory Organization

The proposal was approved by the Board of Directors of NSCC ("Board") at a meeting duly called and held on October 18, 2017.

## 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Not applicable.

## 4. Self-Regulatory Organization's Statement on Burden on Competition

Not applicable.

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[1] Capitalized terms used herein and not otherwise defined herein are defined in the Rules, available at www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.

[2] 17 CFR 240.17Ad-22(e)(3)(ii).

**5. Self-Regulatory Organization's Statement on Comments on the Advance Notice Received from Members, Participants, or Others**

While NSCC has not solicited or received any written comments relating to this proposal, NSCC has conducted outreach to Members in order to provide them with notice of the proposal. NSCC will notify the Commission of any written comments received by NSCC.

**6. Extension of Time Period for Commission Action**

NSCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act for Commission action.[3]

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act of 2010**

*Description of Amendment No. 1*

This filing constitutes Amendment No. 1 ("Amendment") to the advance notice SR-NSCC-2017-805 ("Original Filing") previously filed by NSCC.[4] NSCC is amending the proposed R&W Plan and the Original Filing in order to clarify certain matters and make minor technical and conforming changes to the R&W Plan, as described below and as marked on Exhibit 4 hereto. To the extent such changes to the Plan require changes to the Original Filing, the information provided under "*Description of Proposed Changes*" in the Original Filing has

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[3] 15 U.S.C. 78s(b)(2).

[4] See Securities Exchange Act Release No. 82581 (January 24, 2018), 83 FR 4327 (January 30, 2018) (SR-NSCC-2017-805).

been amended and is restated in its entirety below. Other sections of the Original Filing are unchanged and are restated in their entity for convenience.

First, this Amendment would clarify the meaning of the terms "cease to act," "Member default," "Defaulting Member," and "Member Default Losses" as such terms are used in the Plan. This Amendment would also make conforming changes as necessary to reflect the use of these terms.

Second, this Amendment would clarify that actions and tools described in the Plan that are available in one phase of the Crisis Continuum may be used in subsequent phases of the Crisis Continuum when appropriate to address the applicable situation. This Amendment would also clarify that the allocation of losses resulting from a Member default would be applied when provided for, and in accordance with, Rule 4 of the Rules.

Third, this Amendment would clarify that the Recovery Corridor (as defined therein) is not a "sub-phase" of the recovery phase. Rather, the Recovery Corridor is a period of time that would occur toward the end of the Member default phase, when indicators are that NSCC may transition into the recovery phase. Thus, the Recovery Corridor precedes the recovery phase within the Crisis Continuum.

Fourth, this Amendment would make revisions to address the allocation of losses resulting from a Member default in order to more closely conform such statements to the changes proposed by the Loss Allocation Filing, as defined below.

Fifth, this Amendment would clarify the notifications that NSCC would be required to make under the Proposed Rule 60 (Market Disruption and Force Majeure).

Finally, this Amendment would make minor, technical and conforming revisions to correct typographical errors and to simplify descriptions. For example, such revisions would use lower case for terms that are not defined therein, and would use upper case for terms that are defined. The Amendment would also simplify certain descriptions by removing extraneous words and statements that are repetitive. These minor, technical revisions would not alter the substance of the proposal.

*Description of Proposed Changes*

NSCC is proposing to adopt the R&W Plan to be used by the Board and management of NSCC in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would identify (i) the recovery tools available to NSCC to address the risks of (a) uncovered losses or liquidity shortfalls resulting from the default of one or more Members, and (b) losses arising from non-default events, such as damage to its physical assets, a cyber-attack, or custody and investment losses, and (ii) the strategy for implementation of such tools. The R&W Plan would also establish the strategy and framework for the orderly wind-down of NSCC and the transfer of its business in the remote event the implementation of the available recovery tools does not successfully return NSCC to financial viability.

As discussed in greater detail below, the R&W Plan would provide, among other matters, (i) an overview of the business of NSCC and its parent, The Depository Trust & Clearing Corporation ("DTCC"); (ii) an analysis of NSCC's intercompany arrangements and critical links to other financial market infrastructures ("FMIs"); (iii) a description of NSCC's services, and the criteria used to determine which services are considered critical; (iv) a description of the NSCC and DTCC governance structure; (v) a description of the governance around the overall recovery and wind-down program; (vi) a discussion of tools available to NSCC to mitigate credit/market and liquidity risks, including recovery indicators and triggers, and the governance around management of a stress event along a "Crisis Continuum" timeline; (vii) a discussion of potential non-default losses and the resources available to NSCC to address such losses, including recovery triggers and tools to mitigate such losses; (viii) an analysis of the recovery tools' characteristics, including how they are comprehensive, effective, and transparent, how the tools provide appropriate incentives to Members to, among other things, control and monitor the risks they may present to NSCC, and how NSCC seeks to minimize the negative consequences of executing its recovery tools; and (ix) the framework and approach for the orderly wind-down and transfer of NSCC's business, including an estimate of the time and costs to effect a recovery or orderly wind-down of NSCC.

The R&W Plan would be structured as a roadmap, and would identify and describe the tools that NSCC may use to effect a recovery from the events and scenarios described therein. Certain recovery tools that would be identified in the R&W Plan are based in the Rules (including the Proposed Rules) and, as such, descriptions of those tools would include descriptions of, and reference to, the applicable Rules and any related internal policies and procedures. Other recovery tools that would be identified in the R&W Plan are based in contractual arrangements to which NSCC is a party, including, for example, existing committed or pre-arranged liquidity arrangements. Further, the R&W Plan would state that NSCC may develop further supporting internal guidelines and materials that may provide operationally for matters described in the Plan, and that such documents would be supplemental and subordinate to the Plan.

Key factors considered in developing the R&W Plan and the types of tools available to NSCC were its governance structure and the nature of the markets within which NSCC operates. As a result of these considerations, many of the tools available to NSCC that would be described in the R&W Plan are NSCC's existing, business-as-usual risk management and Member default management tools, which would continue to be applied in scenarios of increasing stress. In addition to these existing, business-as-usual tools, the R&W Plan would describe NSCC's other principal recovery tools, which include, for example, (i) identifying, monitoring and managing general business risk and holding sufficient liquid net assets funded by equity ("LNA") to cover potential general business losses pursuant to the Clearing Agency Policy on Capital Requirements ("Capital Policy"),[5] (ii) maintaining the Clearing Agency Capital Replenishment Plan ("Replenishment Plan") as a viable plan for the replenishment of capital should NSCC's equity fall close to or below the amount being held pursuant to the Capital Policy,[6] and (iii) the

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[5] See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR-DTC-2017-003, SR-FICC-2017-007, SR-NSCC-2017-004).

[6] See id.

process for the allocation of losses among Members, as provided in Rule 4.[7] The R&W Plan would provide governance around the selection and implementation of the recovery tool or tools most relevant to mitigate a stress scenario and any applicable loss or liquidity shortfall.

The development of the R&W Plan is facilitated by the Office of Recovery & Resolution Planning ("R&R Team") of DTCC.[8] The R&R Team reports to the DTCC Management Committee ("Management Committee") and is responsible for maintaining the R&W Plan and for the development and ongoing maintenance of the overall recovery and wind-down planning process. The Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, would review and approve the R&W Plan biennially, and would also review and approve any changes that are proposed to the R&W Plan outside of the biennial review.

As discussed in greater detail below, the Proposed Rules would define the procedures that may be employed in the event of NSCC's default and its wind-down, and would provide for NSCC's authority to take certain actions on the occurrence of a "Market Disruption Event," as defined therein. Significantly, the Proposed Rules would provide Members and Limited Members with transparency and certainty with respect to these matters. The Proposed Rules would facilitate the implementation of the R&W Plan, particularly NSCC's strategy for winding down and transferring its business, and would provide NSCC with the legal basis to implement those aspects of the R&W Plan.

***NSCC R&W Plan***

The R&W Plan is intended to be used by the Board and NSCC's management in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would be structured to provide a roadmap, define the strategy, and identify the tools available to NSCC to either (i) recover in the event it experiences losses that exceed its prefunded resources (such strategies and tools referred to

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7 See Rule 4 (Clearing Fund), supra note 1. NSCC is proposing changes to Rule 4 and other related rules regarding allocation of losses in a separate filing submitted simultaneously with the Original Filing. See Securities Exchange Act Release Nos. 82430 (January 2, 2018), 83 FR 841 (January 8, 2018) (SR-NSCC-2017-017) and 82581 (January 24, 2018), 83 FR 4327 (January 30, 2018) (SR-NSCC-2017-805) (collectively referred to herein as the "Loss Allocation Filing"). NSCC has submitted an amendment to the Loss Allocation Filing. A copy of the amendment to the Loss Allocation Filing is available at http://www.dtcc.com/legal/sec-rule-filings.aspx. NSCC expects the U.S. Securities and Exchange Commission ("Commission") to review both proposals, as amended, together, and, as such, the proposal described in this filing anticipates the approval and implementation of those proposed changes to the Rules.

8 DTCC operates on a shared services model with respect to NSCC and its other subsidiaries. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a subsidiary, including NSCC.

herein as the "Recovery Plan") or (ii) wind-down its business in a manner designed to permit the continuation of its critical services in the event that such recovery efforts are not successful (such strategies and tools referred to herein as the "Wind-down Plan"). The description of the R&W Plan below is intended to highlight the purpose and expected effects of the material aspects of the R&W Plan, and to provide Members and Limited Members with appropriate transparency into these features.

Business Overview, Critical Services, and Governance

The introduction to the R&W Plan would identify the document's purpose and its regulatory background, and would outline a summary of the Plan. The stated purpose of the R&W Plan is that it is to be used by the Board and NSCC management in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would be maintained by NSCC in compliance with Rule 17Ad-22(e)(3)(ii) under the Act[9] by providing plans for the recovery and orderly wind-down of NSCC.

The R&W Plan would describe DTCC's business profile, provide a summary of NSCC's services, and identify the intercompany arrangements and links between NSCC and other entities, including other FMIs. This overview section would provide a context for the R&W Plan by describing NSCC's business, organizational structure and critical links to other entities. By providing this context, this section would facilitate the analysis of the potential impact of utilizing the recovery tools set forth in later sections of the Recovery Plan, and the analysis of the factors that would be addressed in implementing the Wind-down Plan.

DTCC is a user-owned and user-governed holding company and is the parent company of NSCC and its affiliates, The Depository Trust Company ("DTC") and Fixed Income Clearing Corporation ("FICC", and, together with NSCC and DTC, the "Clearing Agencies"). The Plan would describe how corporate support services are provided to NSCC from DTCC and DTCC's other subsidiaries through intercompany agreements under a shared services model.

The Plan would provide a description of established links between NSCC and other FMIs, including The Options Clearing Corporation ("OCC"), CDS Clearing and Depository Services Inc. ("CDS"), and DTC. For example, the arrangement between NSCC and OCC governs the process by which OCC submits transactions to NSCC for settlement, and sets the time when the settlement obligations and the central counterparty trade guaranty shifts from OCC to NSCC with respect to these transactions.[10] The arrangement with CDS enables participants of CDS to clear and settle OTC trades with U.S. broker-dealers through subaccounts maintained by CDS through its own membership with NSCC.[11] The interface between DTC and

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[9] 17 CFR 240.17Ad-22(e)(3)(ii).

[10] See Securities Exchange Act Release Nos. 81266 (July 31, 2017), 82 FR 36484 (August 4, 2017) (SR-NSCC-2017-007, SR-OCC-2017-013); 81260 (July 31, 2017), 82 FR 36476 (August 4, 2017) (SR-NSCC-2017-803, SR-OCC-2017-804); Procedure III (Trade Recording Service (Interface with Qualified Clearing Agencies)), supra note 1.

[11] See Rule 61 (International Links), supra note 1.

NSCC permits transactions to flow between DTC's system and NSCC's Continuous Net Settlement ("CNS") system in a collateralized environment.[12] NSCC's CNS relies on this interface with DTC for the book-entry movement of securities to settle transactions. This section of the Plan, identifying and briefly describing NSCC's established links, would provide a mapping of critical connections and dependencies that may need to be relied on or otherwise addressed in connection with the implementation of either the Recovery Plan or the Wind-down Plan.

The Plan would define the criteria for classifying certain of NSCC's services as "critical," and would identify those critical services and the rationale for their classification. This section would provide an analysis of the potential systemic impact from a service disruption, and is important for evaluating how the recovery tools and the wind-down strategy would facilitate and provide for the continuation of NSCC's critical services to the markets it serves. The criteria that would be used to identify an NSCC service or function as critical would include consideration as to (1) whether there is a lack of alternative providers or products; (2) whether failure of the service could impact NSCC's ability to perform its central counterparty services; (3) whether failure of the service could impact NSCC's ability to perform its netting services, and, as such, the availability of market liquidity; and (4) the service is interconnected with other participants and processes within the U.S. financial system, for example, with other FMIs, settlement banks, broker-dealers, and exchanges. The Plan would then list each of those services, functions or activities that NSCC has identified as "critical" based on the applicability of these four criteria. Such critical services would include, for example, trade capture and recording through the Universal Trade Capture system,[13] services supporting Correspondent Clearing relationships,[14] the CNS system,[15] the Balance Order Netting system,[16] Mutual Funds Services,[17] and the settlement of money payments with respect to transactions processed by NSCC.[18] The R&W Plan would also include a non-exhaustive list of NSCC services that are not deemed critical.

The evaluation of which services provided by NSCC are deemed critical is important for purposes of determining how the R&W Plan would facilitate the continuity of those services. As

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12 See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation), supra note 1.

13 See Rule 7 (Comparison and Trade Recording Operation) and Procedure II (Trade Comparison and Recording Service), supra note 1.

14 See Procedure IV (Special Representative Service), supra note 1.

15 See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation), supra note 1.

16 See Rule 8 (Balance Order and Foreign Security Systems) and Procedure V (Balance Order Accounting Operation), supra note 1.

17 See Rule 52 (Mutual Funds Services), supra note 1.

18 See Rule 12 (Settlement) and Procedure VIII (Money Settlement Service), supra note 1.

discussed further below, while NSCC's Wind-down Plan would provide for the transfer of all critical services to a transferee in the event NSCC's wind-down is implemented, it would anticipate that any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership, would also be transferred.

The Plan would describe the governance structure of both DTCC and NSCC. This section of the Plan would identify the ownership and governance model of these entities at both the Board of Directors and management levels. The Plan would state that the stages of escalation required to manage recovery under the Recovery Plan or to invoke NSCC's wind-down under the Wind-down Plan would range from relevant business line managers up to the Board through NSCC's governance structure. The Plan would then identify the parties responsible for certain activities under both the Recovery Plan and the Wind-down Plan, and would describe their respective roles. The Plan would identify the Risk Committee of the Board ("Board Risk Committee") as being responsible for oversight of risk management activities at NSCC, which include focusing on both oversight of risk management systems and processes designed to identify and manage various risks faced by NSCC, and, due to NSCC's critical role in the markets in which it operates, oversight of NSCC's efforts to mitigate systemic risks that could impact those markets and the broader financial system.[19] The Plan would identify the DTCC Management Risk Committee ("Management Risk Committee") as primarily responsible for general, day-to-day risk management through delegated authority from the Board Risk Committee. The Plan would state that the Management Risk Committee has delegated specific day-to-day risk management, including management of risks addressed through margining systems and related activities, to the DTCC Group Chief Risk Office ("GCRO"), which works with staff within the DTCC Financial Risk Management group. Finally, the Plan would describe the role of the Management Committee, which provides overall direction for all aspects of NSCC's business, technology, and operations and the functional areas that support these activities.

The Plan would describe the governance of recovery efforts in response to both default losses and non-default losses under the Recovery Plan, identifying the groups responsible for those recovery efforts. Specifically, the Plan would state that the Management Risk Committee provides oversight of actions relating to the default of a Member, which would be reported and escalated to it through the GCRO, and the Management Committee provides oversight of actions relating to non-default events that could result in a loss, which would be reported and escalated to it from the DTCC Chief Financial Officer ("CFO") and the DTCC Treasury group that reports to the CFO, and from other relevant subject matter experts based on the nature and circumstances of the non-default event.[20] More generally, the Plan would state that the type of loss and the

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[19] The charter of the Board Risk Committee is available at http://www.dtcc.com/~/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Risk-Committee-Charter.pdf.

[20] The Plan would state that these groups would be involved to address how to mitigate the financial impact of non-default losses, and in recommending mitigating actions, the Management Committee would consider information and recommendations from relevant subject matter experts based on the nature and circumstances of the non-default event.

nature and circumstances of the events that lead to the loss would dictate the components of governance to address that loss, including the escalation path to authorize those actions. As described further below, both the Recovery Plan and the Wind-down Plan would describe the governance of escalations, decisions, and actions under each of those plans.

Finally, the Plan would describe the role of the R&R Team in managing the overall recovery and wind-down program and plans for each of the Clearing Agencies.

NSCC Recovery Plan

The Recovery Plan is intended to be a roadmap of those actions that NSCC may employ to monitor and, as needed, stabilize its financial condition. As each event that could lead to a financial loss could be unique in its circumstances, the Recovery Plan would not be prescriptive and would permit NSCC to maintain flexibility in its use of identified tools and in the sequence in which such tools are used, subject to any conditions in the Rules or the contractual arrangement on which such tool is based. NSCC's Recovery Plan would consist of (1) a description of the risk management surveillance, tools, and governance that NSCC would employ across evolving stress scenarios that it may face as it transitions through a "Crisis Continuum," described below; (2) a description of NSCC's risk of losses that may result from non-default events, and the financial resources and recovery tools available to NSCC to manage those risks and any resulting losses; and (3) an evaluation of the characteristics of the recovery tools that may be used in response to either default losses or non-default losses, as described in greater detail below. In all cases, NSCC would act in accordance with the Rules, within the governance structure described in the R&W Plan, and in accordance with applicable regulatory oversight to address each situation in order to best protect NSCC, Members, and the markets in which it operates.

*Managing Member Default Losses and Liquidity Needs Through the Crisis Continuum.* The Recovery Plan would describe the risk management surveillance, tools, and governance that NSCC may employ across an increasing stress environment, which is referred to as the "Crisis Continuum." This description would identify those tools that can be employed to mitigate losses, and mitigate or minimize liquidity needs, as the market environment becomes increasingly stressed. The phases of the Crisis Continuum would include (1) a stable market phase, (2) a stress market phase, (3) a phase commencing with NSCC's decision to cease to act for a Member or Affiliated Family of Members (referred to in the Plan as the " Member default phase"),[21] and (4) a recovery phase. This section of the Recovery Plan would address conditions and circumstances relating to NSCC's decision to cease to act for a Member pursuant to the

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Any necessary operational response to these events, however, would be managed in accordance with applicable incident response/business continuity process; for example, processes established by the DTCC Technology Risk Management group would be followed in response to a cyber event.

[21] The Plan would define an "Affiliated Family" of Members as a number of affiliated entities that are all Members of NSCC.

Rules.[22] In the Plan, "cease to act" and the events that may lead to such decision, are used within the context of Rule 46 of the Rules.[23] Further, for ease of reference, the R&W Plan would, for purposes of the Plan, use the term "Member default" to refer to the event or events that precipitate NSCC ceasing to act for a Member or an Affiliated Family, would use the term "Defaulting Member" to refer to a Member for which NSCC has ceased to act, and would use the term "Member Default Losses" to refer to losses that arise out of or relate to the Member default (including any losses that arise from liquidation of that Member's portfolio), and to distinguish such losses from those that arise out of the business or other events not related to a Member default, which are separately addressed in the Plan.

The Recovery Plan would provide context to its roadmap through this Crisis Continuum by describing NSCC's ongoing management of credit, market and liquidity risk, and its existing process for measuring and reporting its risks as they align with established thresholds for its tolerance of those risks. The Recovery Plan would discuss the management of credit/market risk and liquidity exposures together, because the tools that address these risks can be deployed either separately or in a coordinated approach in order to address both exposures. NSCC manages these risk exposures collectively to limit their overall impact on NSCC and its membership. As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.[24] NSCC manages its liquidity risks with an objective of maintaining sufficient resources to be able to fulfill obligations that have been guaranteed by NSCC in the event of a Member default that presents the largest aggregate liquidity exposure to NSCC over the settlement cycle.[25]

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22 See Rule 46 (Restrictions on Access to Services), supra note 1.

23 Id.

24 See Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters), supra note 1. Because NSCC does not maintain a guaranty fund separate and apart from the Clearing Fund it collects from Members, NSCC monitors its credit exposure to its Members by managing the market risks of each Member's unsettled portfolio through the collection of the Clearing Fund. The aggregate of all Members' Required Fund Deposits comprises the Clearing Fund that represents NSCC's prefunded resources to address uncovered loss exposures, as provided for in proposed Rule 4. Therefore, NSCC's market risk management strategy is designed to comply with Rule 17Ad-22(e)(4) under the Act, where these risks are referred to as "credit risks." See also 17 CFR 240.17Ad-22(e)(4).

25 NSCC's liquidity risk management strategy, including the manner in which NSCC utilizes its liquidity tools, is described in the Clearing Agency Liquidity Risk Management Framework. See Securities Exchange Act Release Nos. 80489 (April 19, 2017), 82 FR 19120 (April 25, 2017) (SR-DTC-2017-004, SR-NSCC-2017-005, SR-FICC-2017-008); 81194 (July 24, 2017), 82 FR 35241 (July 28, 2017) (SR-DTC-2017-004, SR-NSCC-2017-005, SR-FICC-2017-008).

The Recovery Plan would outline the metrics and indicators that NSCC has developed to evaluate a stress situation against established risk tolerance thresholds. Each risk mitigation tool identified in the Recovery Plan would include a description of the escalation thresholds that allow for effective and timely reporting to the appropriate internal management staff and committees, or to the Board. The Recovery Plan would make clear that these tools and escalation protocols would be calibrated across each phase of the Crisis Continuum. The Recovery Plan would also establish that NSCC would retain the flexibility to deploy such tools either separately or in a coordinated approach, and to use other alternatives to these actions and tools as necessitated by the circumstances of a particular Member default, in accordance with the Rules. Therefore, the Recovery Plan would both provide NSCC with a roadmap to follow within each phase of the Crisis Continuum, and would permit it to adjust its risk management measures to address the unique circumstances of each event.

The Recovery Plan would describe the conditions that mark each phase of the Crisis Continuum, and would identify actions that NSCC could take as it transitions through each phase in order to both prevent losses from materializing through active risk management, and to restore the financial health of NSCC during a period of stress.

The stable market phase of the Crisis Continuum would describe active risk management activities in the normal course of business. These activities would include (1) routine monitoring of margin adequacy through daily review of back testing and stress testing results that review the adequacy of NSCC's margin calculations, and escalation of those results to internal and Board committees;[26] and (2) routine monitoring of liquidity adequacy through review of daily liquidity studies that measure sufficiency of available liquidity resources to meet cash settlement obligations of the Member that would generate the largest aggregate payment obligation.[27]

The Recovery Plan would describe some of the indicators of the stress market phase of the Crisis Continuum, which would include, for example, volatility in market prices of certain assets where there is increased uncertainty among market participants about the fundamental value of those assets. This phase would involve general market stresses, when no Member default would be imminent. Within the description of this phase, the Recovery Plan would provide that NSCC may take targeted, routine risk management measures as necessary and as permitted by the Rules.

Within the Member default phase of the Crisis Continuum, the Recovery Plan would provide a roadmap for the existing procedures that NSCC would follow in the event of a Member

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[26] NSCC's stress testing practices are described in the Clearing Agency Stress Testing Framework (Market Risk). See Securities Exchange Act Release Nos. 80485 (April 19, 2017), 82 FR 19131 (April 25, 2017) (SR-DTC-2017-005, SR-FICC-2017-009, SR-NSCC-2017-006); 81192 (July 24, 2017), 82 FR 35245 (July 28, 2017) (SR-DTC-2017-005, SR-FICC-2017-009, SR-NSCC-2017-006).

[27] See supra note 25.

default and any decision by NSCC to cease to act for that Member.[28] The Recovery Plan would provide that the objectives of NSCC's actions upon a Member or Affiliated Family default are to (1) minimize losses and market exposure of the affected Members and NSCC's non-Defaulting Members; and (2), to the extent practicable, minimize disturbances to the affected markets. The Recovery Plan would describe tools, actions, and related governance for both market risk monitoring and liquidity risk monitoring through this phase. For example, in connection with managing its market risk during this phase, NSCC would, pursuant to the Rules, (1) monitor and assess the adequacy of Clearing Fund resources; (2), when necessary and appropriate pursuant to the Rules, assess and collect additional margin requirements; and (3) follow its operational procedures to liquidate the Defaulting Member's portfolio. Management of liquidity risk through this phase would involve ongoing monitoring of the adequacy of NSCC's liquidity resources, and the Recovery Plan would identify certain actions NSCC may deploy as it deems necessary to mitigate a potential liquidity shortfall, which would include, for example, adjusting its strategy for closing out the Defaulting Member's portfolio or seeking additional liquidity resources. The Recovery Plan would state that, throughout this phase, relevant information would be escalated and reported to both internal management committees and the Board Risk Committee.

The Recovery Plan would also identify financial resources available to NSCC, pursuant to the Rules, to address losses arising out of a Member default. Specifically, Rule 4, as proposed to be amended by the Loss Allocation Filing, would provide that losses remaining after application of the Defaulting Member's resources be satisfied first by applying a "Corporate Contribution," and then, if necessary, by allocating remaining losses among the membership in accordance with such Rule 4.[29]

In order to provide for an effective and timely recovery, the Recovery Plan would describe the period of time that would occur near the end of the Member default phase, during which NSCC may experience stress events or observe early warning indicators that allow it to evaluate its options and prepare for the recovery phase (referred to in the Plan as the "Recovery Corridor"). The Recovery Plan would then describe the recovery phase of the Crisis Continuum, which would begin on the date that NSCC issues the first Loss Allocation Notice of the second

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28 See Rule 18 (Procedures for When the Corporation Declines or Ceases to Act) and Rule 46 (Restrictions on Access to Services), supra note 1.

29 See supra note 7. The Loss Allocation Filing proposes to amend Rule 4 to define the amount NSCC would contribute to address a loss resulting from either a Member default or a non-default event as the "Corporate Contribution." This amount would be 50 percent (50%) of the "General Business Risk Capital Requirement," which is calculated pursuant to the Capital Policy and is an amount sufficient to cover potential general business losses so that NSCC can continue operations and services as a going concern if those losses materialize, in compliance with Rule 17Ad-22(e)(15) under the Act. See also supra note 5; 17 CFR 240.17Ad-22(e)(15).

loss allocation round with respect to a given "Event Period."[30] The recovery phase would describe actions that NSCC may take to avoid entering into a wind down of its business.

NSCC expects that significant deterioration of liquidity resources would cause it to enter the Recovery Corridor. As such, the Plan would describe the actions NSCC may take aimed at replenishing those resources. Recovery Corridor indicators may include, for example, a rapid and material change in market prices or substantial intraday activity volume by the Member that subsequently defaults, neither of which are mitigated by intraday margin calls, or subsequent defaults by other Members or Affiliated Families during a compressed time period. Throughout the Recovery Corridor, NSCC would monitor the adequacy of its resources and the expected timing of replenishment of those resources, and would do so through the monitoring of certain corridor indicator metrics.

The majority of the corridor indicators, as identified in the Recovery Plan, relate directly to conditions that may require NSCC to adjust its strategy for hedging and liquidating a Defaulting Member's portfolio, and any such changes would include an assessment of the status of the corridor indicators. Corridor indicators would include, for example, effectiveness and speed of NSCC's efforts to close out the portfolio of the Defaulting Member, and an impediment to the availability of its financial resources. For each corridor indicator, the Recovery Plan would identify (1) measures of the indicator, (2) evaluations of the status of the indicator, (3) metrics for determining the status of the deterioration or improvement of the indicator, and (4) "Corridor Actions," which are steps that may be taken to improve the status of the indicator,[31] as well as management escalations required to authorize those steps. Because NSCC has never experienced the default of multiple Members, it has not, historically, measured the deterioration or improvements metrics of the corridor indicators. As such, these metrics were chosen based on the business judgment of NSCC management.

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30 The Loss Allocation Filing proposes to amend Rule 4 to introduce the concept of an "Event Period" as the ten (10) Business Days beginning on (i) with respect to a Member default, the day on which NSCC notifies Members that it has ceased to act for a Member under the Rules, or (ii) with respect to a non-default loss, the day that NSCC notifies Members of the determination by the Board that there is a non-default loss event, as described in greater detail in that filing. The proposed Rule 4 would define a "round" as a series of loss allocations relating to an Event Period, and would provide that the first Loss Allocation Notice in a first, second, or subsequent round shall expressly state that such notice reflects the beginning of a first, second, or subsequent round. The maximum allocable loss amount of a round is equal to the sum of the "Loss Allocation Caps" (as defined in the proposed Rule 4) of those Members included in the round. See supra note 7.

31 The Corridor Actions that would be identified in the Plan are indicative, but not prescriptive; therefore, if NSCC needs to consider alternative actions due to the applicable facts and circumstances, the escalation of those alternative actions would follow the same escalation protocol identified in the Plan for the Corridor Indicator to which the action relates.

The Recovery Plan would also describe the reporting and escalation of the status of the corridor indicators throughout the Recovery Corridor. Significant deterioration of a corridor indicator, as measured by the metrics set out in the Recovery Plan, would be escalated to the Board. NSCC management would review the corridor indicators and the related metrics at least annually, and would modify these metrics as necessary in light of observations from simulations of Member defaults and other analyses. Any proposed modifications would be reviewed by the Management Risk Committee and the Board Risk Committee. The Recovery Plan would estimate that NSCC may remain in the Recovery Corridor between one day and two weeks. This estimate is based on historical data observed in past Member defaults, the results of simulations of Member defaults, and periodic liquidity analyses conducted by NSCC. The actual length of a Recovery Corridor would vary based on actual market conditions observed at the time, and NSCC would expect the Recovery Corridor to be shorter in market conditions of increased stress.

The Recovery Plan would outline steps by which NSCC may allocate its losses, which would occur when and in the order provided in Rule 4, as amended.[32] The Recovery Plan would also identify tools that may be used to address foreseeable shortfalls of NSCC's liquidity resources following a Member default, and would provide that these tools may be used as appropriate during the Crisis Continuum to address liquidity shortfalls if they arise. The goal in managing NSCC's qualified liquidity resources is to maximize resource availability in an evolving stress situation, to maintain flexibility in the order and use of sources of liquidity, and to repay any third party lenders of liquidity in a timely manner. These liquidity tools include, for example, NSCC's committed 364-day credit facility,[33] and the issuance and private placement of additional short-term promissory notes ("commercial paper") and extendible notes, the cash proceeds of which provide NSCC with prefunded liquidity.[34] Additional voluntary or uncommitted tools to address potential liquidity shortfalls, for example uncommitted bank loans, which may supplement NSCC's other liquid resources described herein, would also be identified in the Recovery Plan. The Recovery Plan would state that, due to the extreme nature of a stress event that would cause NSCC to consider the use of these liquidity tools, the availability and capacity of these liquidity tools, and the willingness of counterparties to lend, cannot be accurately predicted and are dependent on the circumstances of the applicable stress period, including market price volatility, actual or perceived disruptions in financial markets, the costs to NSCC of utilizing these tools, and any potential impact on NSCC's credit rating.

As stated above, the Recovery Plan would state that NSCC will have entered the recovery phase on the date that it issues the first Loss Allocation Notice of the second loss allocation

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[32] As these matters are described in greater detail in the Loss Allocation Filing and in the proposed amendments to Rule 4, described therein, reference is made to that filing and the details are not repeated here. See supra note 7.

[33] See Securities Exchange Act Release No. 80605 (May 5, 2017), 82 FR 21850 (May 10, 2017) (SR-DTC-2017-802, SR-NSCC-2017-802).

[34] See Securities Exchange Act Release No. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015) (SR-NSCC-2015-802).

round with respect to a given Event Period. The Recovery Plan would provide that, during the recovery phase, NSCC would continue and, as needed, enhance, the monitoring and remedial actions already described in connection with previous phases of the Crisis Continuum, and would remain in the recovery phase until its financial resources are expected to be or are fully replenished, or until the Wind-down Plan is triggered, as described below.

The Recovery Plan would describe governance for the actions and tools that may be employed within each phase of the Crisis Continuum, which would be dictated by the facts and circumstances applicable to the situation being addressed. Such facts and circumstances would be measured by the various indicators and metrics applicable to that phase of the Crisis Continuum, and would follow the relevant escalation protocols that would be described in the Recovery Plan. The Recovery Plan would also describe the governance procedures around a decision to cease to act for a Member, pursuant to the Rules, and around the management and oversight of the subsequent liquidation of the Defaulting Member's portfolio. The Recovery Plan would state that, overall, NSCC would retain flexibility in accordance with the Rules, its governance structure, and its regulatory oversight, to address a particular situation in order to best protect NSCC and the Members, and to meet the primary objectives, throughout the Crisis Continuum, of minimizing losses and, where consistent and practicable, minimizing disturbance to affected markets.

*Non-Default Losses.* The Recovery Plan would outline how NSCC may address losses that result from events other than a Member default. While these matters are addressed in greater detail in other documents, this section of the Plan would provide a roadmap to those documents and an outline for NSCC's approach to monitoring and managing losses that could result from a non-default event. The Plan would first identify some of the risks NSCC faces that could lead to these losses, which include, for example, the business and profit/loss risks of unexpected declines in revenue or growth of expenses; the operational risks of disruptions to systems or processes that could lead to large losses, including those resulting from, for example, a cyber-attack; and custody or investment risks that could lead to financial losses. The Recovery Plan would describe NSCC's overall strategy for the management of these risks, which includes a "three lines of defense" approach to risk management that allows for comprehensive management of risk across the organization.[35] The Recovery Plan would also describe NSCC's

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[35] This "three lines of defense" approach to risk management includes (1) a first line of defense comprised of the various business lines and functional units that support the products and services offered by NSCC; (2) a second line of defense comprised of control functions that support NSCC, including the risk management, legal and compliance areas; and (3) a third line of defense, which is performed by an internal audit group. The Clearing Agency Risk Management Framework includes a description of this "three lines of defense" approach to risk management, and addresses how NSCC comprehensively manages various risks, including operational, general business, investment, custody, and other risks that arise in or are borne by it. See Securities Exchange Act Release No. 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (SR-DTC-2017-013, SR-FICC-2017-016, SR-NSCC-2017-012). The Clearing Agency Operational Risk Management Framework describes the manner in which NSCC manages operational risks, as defined therein. See Securities Exchange Act Release No. 81745 (September 28,

approach to financial risk and capital management. The Plan would identify key aspects of this approach, including, for example, an annual budget process, business line performance reviews with management, and regular review of capital requirements against LNA. These risk management strategies are collectively intended to allow NSCC to effectively identify, monitor, and manage risks of non-default losses.

The Plan would identify the two categories of financial resources NSCC maintains to cover losses and expenses arising from non-default risks or events as (1) LNA, maintained, monitored, and managed pursuant to the Capital Policy, which include (a) amounts held in satisfaction of the General Business Risk Capital Requirement,[36] (b) the Corporate Contribution,[37] and (c) other amounts held in excess of NSCC's capital requirements pursuant to the Capital Policy; and (2) resources available pursuant to the loss allocation provisions of Rule 4.[38]

The Plan would address the process by which the CFO and the DTCC Treasury group would determine which available LNA resources are most appropriate to cover a loss that is caused by a non-default event. This determination involves an evaluation of a number of factors, including the current and expected size of the loss, the expected time horizon over when the loss or additional expenses would materialize, the current and projected available LNA, and the likelihood LNA could be successfully replenished pursuant to the Replenishment Plan, if triggered.[39] Finally the Plan would discuss how NSCC would apply its resources to address losses resulting from a non-default event, including the order of resources it would apply if the loss or liability exceeds NSCC's excess LNA amounts, or is large relative thereto, and the Board has declared the event a "Declared Non-Default Loss Event" pursuant to Rule 4.[40]

The Plan would also describe proposed Rule 60 (Market Disruption and Force Majeure), which NSCC is proposing to adopt in the Rules. This Proposed Rule would provide transparency around how NSCC would address extraordinary events that may occur outside its control. Specifically, the Proposed Rule would define a "Market Disruption Event" and the governance around a determination that such an event has occurred. The Proposed Rule would also describe NSCC's authority to take actions during the pendency of a Market Disruption Event that it deems appropriate to address such an event and facilitate the continuation of its services, if practicable, as described in greater detail below.

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2017), 82 FR 46332 (October 4, 2017) (SR-DTC-2017-014, SR-FICC-2017-017, SR-NSCC-2017-013).

36 See supra note 29.

37 See supra note 29.

38 See supra note 7.

39 See supra note 5.

40 See supra note 7.

The Plan would describe the interaction between the Proposed Rule and NSCC's existing processes and procedures addressing business continuity management and disaster recovery (generally, the "BCM/DR procedures"), making clear that the Proposed Rule is designed to support those BCM/DR procedures and to address circumstances that may be exogenous to NSCC and not necessarily addressed by the BCM/DR procedures. Finally, the Plan would describe that, because the operation of the Proposed Rule is specific to each applicable Market Disruption Event, the Proposed Rule does not define a time limit on its application. However, the Plan would note that actions authorized by the Proposed Rule would be limited to the pendency of the applicable Market Disruption Event, as made clear in the Proposed Rule. Overall, the Proposed Rule is designed to mitigate risks caused by Market Disruption Events and, thereby, minimize the risk of financial loss that may result from such events.

*Recovery Tool Characteristics.* The Recovery Plan would describe NSCC's evaluation of the tools identified within the Recovery Plan, and its rationale for concluding that such tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to Members and minimize negative impact on Members and the financial system, in compliance with guidance published by the Commission in connection with the adoption of Rule 17Ad-22(e)(3)(ii) under the Act.[41] NSCC's analysis and the conclusions set forth in this section of the Recovery Plan are described in greater detail in Item 3(b) of this filing, below.

NSCC Wind-down Plan

The Wind-down Plan would provide the framework and strategy for the orderly wind-down of NSCC if the use of the recovery tools described in the Recovery Plan do not successfully return NSCC to financial viability. While NSCC believes that, given the comprehensive nature of the recovery tools, such event is extremely unlikely, as described in greater detail below, NSCC is proposing a wind-down strategy that provides for (1) the transfer of NSCC's business, assets and membership to another legal entity, (2) such transfer being effected in connection with proceedings under Chapter 11 of the U.S. Federal Bankruptcy Code,[42] and (3) after effectuating this transfer, NSCC liquidating any remaining assets in an orderly manner in bankruptcy proceedings. NSCC believes that the proposed transfer approach to a wind-down would meet its objectives of (1) assuring that NSCC's critical services will be available to the market as long as there are Members in good standing, and (2) minimizing disruption to the operations of Members and financial markets generally that might be caused by NSCC's failure.

In describing the transfer approach to NSCC's Wind-down Plan, the Plan would identify the factors that NSCC considered in developing this approach, including the fact that NSCC does not own material assets that are unrelated to its clearance and settlement activities. As such, a business reorganization or "bail-in" of debt approach would be unlikely to mitigate significant losses. Additionally, NSCC's approach was developed in consideration of its critical and unique

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41 Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14).

42 11 U.S.C. 1101 et seq.

position in the U.S. markets, which precludes any approach that would cause NSCC's critical services to no longer be available.

First, the Wind-down Plan would describe the potential scenarios that could lead to the wind-down of NSCC, and the likelihood of such scenarios. The Wind-down Plan would identify the time period leading up to a decision to wind-down NSCC as the "Runway Period." This period would follow the implementation of any recovery tools, as it may take a period of time, depending on the severity of the market stress at that time, for these tools to be effective or for NSCC to realize a loss sufficient to cause it to be unable to effectuate settlements and repay its obligations.[43] The Wind-down Plan would identify some of the indicators that it has entered this Runway Period, which would include, for example, successive Member defaults, significant Member retirements thereafter, and NSCC's inability to replenish its financial resources following the liquidation of the portfolio of the Defaulting Member(s).

The trigger for implementing the Wind-down Plan would be a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning NSCC to viability as a going concern. As described in the Plan, NSCC believes this is an appropriate trigger because it is both broad and flexible enough to cover a variety of scenarios, and would align incentives of NSCC and the Members to avoid actions that might undermine NSCC's recovery efforts. Additionally, this approach takes into account the characteristics of NSCC's recovery tools and enables the Board to consider (1) the presence of indicators of a successful or unsuccessful recovery, and (2) potential for knock-on effects of continued iterative application of NSCC's recovery tools.

The Wind-down Plan would describe the general objectives of the transfer strategy, and would address assumptions regarding the transfer of NSCC's critical services, business, assets and membership, and the assignment of NSCC's links with other FMIs, to another legal entity that is legally, financially, and operationally able to provide NSCC's critical services to entities that wish to continue their membership following the transfer ("Transferee"). The Wind-down Plan would provide that the Transferee would be either (1) a third party legal entity, which may be an existing or newly established legal entity or a bridge entity formed to operate the business on an interim basis to enable the business to be transferred subsequently ("Third Party Transferee"); or (2) an existing, debt-free failover legal entity established ex-ante by DTCC ("Failover Transferee") to be used as an alternative Transferee in the event that no viable or preferable Third Party Transferee timely commits to acquire NSCC's business. NSCC would seek to identify the proposed Transferee, and negotiate and enter into transfer arrangements during the Runway Period and prior to making any filings under Chapter 11 of the U.S. Federal Bankruptcy Code.[44] As stated above, the Wind-down Plan would anticipate that the transfer to

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43 The Wind-down Plan would state that, given NSCC's position as a user-governed financial market utility, it is possible that Members might voluntarily elect to provide additional support during the recovery phase leading up to a potential trigger of the Wind-down Plan, but would also make clear that NSCC cannot predict the willingness of Members to do so.

44 See 11 U.S.C. 1101 et seq.

the Transferee be effected in connection with proceedings under Chapter 11 of the U.S. Federal Bankruptcy Code, and pursuant to a bankruptcy court order under Section 363 of the Bankruptcy Code, such that the transfer would be free and clear of claims against, and interests in, NSCC, except to the extent expressly provided in the court's order.[45]

In order to effect a timely transfer of its services and minimize the market and operational disruption of such transfer, NSCC would expect to transfer all of its critical services and any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership. Following the transfer, the Wind-down Plan would anticipate that the Transferee and its continuing membership would determine whether to continue to provide any transferred non-critical service on an ongoing basis, or terminate the non-critical service following some transition period. NSCC's Wind-down Plan would anticipate that the Transferee would enter into a transition services agreement with DTCC so that DTCC would continue to provide the shared services it currently provides to NSCC, including staffing, infrastructure and operational support. The Wind-down Plan would also anticipate the assignment of NSCC's link arrangements, including those with DTC, CDS and OCC, described above, to the Transferee.[46] The Wind-down Plan would provide that Members' open positions existing prior to the effective time of the transfer would be addressed by the provisions of the proposed Wind-down Rule and Corporation Default Rule, as defined and described below, and that the Transferee would not acquire any pending or open transactions with the transfer of the business. The Wind-down Plan would anticipate that the Transferee would accept transactions for processing with a trade date from and after the effective time of the transfer.

The Wind-down Plan would provide that, following the effectiveness of the transfer to the Transferee, the wind-down of NSCC would involve addressing any residual claims against NSCC through the bankruptcy process and liquidating the legal entity. As such, and as stated above, the Wind-down Plan does not contemplate NSCC continuing to provide services in any capacity following the transfer time, and any services not transferred would be terminated.

The Wind-down Plan would also identify the key dependencies for the effectiveness of the transfer, which include regulatory approvals that would permit the Transferee to be legally qualified to provide the transferred services from and after the transfer, and approval by the applicable bankruptcy court of, among other things, the proposed sale, assignments, and transfers to the Transferee.

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45 See id. at 363.

46 The proposed transfer arrangements outlined in the Wind-down Plan do not contemplate the transfer of any credit or funding agreements, which are generally not assignable by NSCC. However, to the extent the Transferee adopts rules substantially identical to those NSCC has in effect prior to the transfer, it would have the benefit of any rules-based liquidity funding. The Wind-down Plan contemplates that no Clearing Fund would be transferred to the Transferee, as it is not held in a bankruptcy remote manner and it is the primary prefunded liquidity resource to be accessed in the recovery phase.

The Wind-down Plan would address governance matters related to the execution of the transfer of NSCC's business and its wind-down. The Wind-down Plan would address the duties of the Board to execute the wind-down of NSCC in conformity with (1) the Rules, (2) the Board's fiduciary duties, which mandate that it exercise reasonable business judgment in performing these duties, and (3) NSCC's regulatory obligations under the Act as a registered clearing agency. The Wind-down Plan would also identify certain factors the Board may consider in making these decisions, which would include, for example, whether NSCC could safely stabilize the business and protect its value without seeking bankruptcy protection, and NSCC's ability to continue to meet its regulatory requirements.

The Wind-down Plan would describe (1) actions NSCC or DTCC may take to prepare for wind-down in the period before NSCC experiences any financial distress, (2) actions NSCC would take both during the recovery phase and the Runway Period to prepare for the execution of the Wind-down Plan, and (3) actions NSCC would take upon commencement of bankruptcy proceedings to effectuate the Wind-down Plan.

Finally, the Wind-down Plan would include an analysis of the estimated time and costs to effectuate the plan, and would provide that this estimate be reviewed and approved by the Board annually. In order to estimate the length of time it might take to achieve a recovery or orderly wind-down of NSCC's critical operations, as contemplated by the R&W Plan, the Wind-down Plan would include an analysis of the possible sequencing and length of time it might take to complete an orderly wind-down and transfer of critical operations, as described in earlier sections of the R&W Plan. The Wind-down Plan would also include in this analysis consideration of other factors, including the time it might take to complete any further attempts at recovery under the Recovery Plan. The Wind-down Plan would then multiply this estimated length of time by NSCC's average monthly operating expenses, including adjustments to account for changes to NSCC's profit and expense profile during these circumstances, over the previous twelve months to determine the amount of LNA that it should hold to achieve a recovery or orderly wind-down of NSCC's critical operations. The estimated wind-down costs would constitute the "Recovery/Wind-down Capital Requirement" under the Capital Policy.[47] Under that policy, the General Business Risk Capital Requirement is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement.[48]

The R&W Plan is designed as a roadmap, and the types of actions that may be taken both leading up to and in connection with implementation of the Wind-down Plan would be primarily addressed in other supporting documentation referred to therein.

The Wind-down Plan would address proposed Rule 41 (Corporation Default) and proposed Rule 42 (Wind-down of the Corporation), which would be adopted to facilitate the implementation of the Wind-down Plan, and are discussed below.

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47 See supra note 5.

48 See supra note 5.

***Proposed Rules***

In connection with the adoption of the R&W Plan, NSCC is proposing to adopt the Proposed Rules, each described below. The Proposed Rules would facilitate the execution of the R&W Plan and would provide Members and Limited Members with transparency as to critical aspects of the Plan, particularly as they relate to the rights and responsibilities of both NSCC and Members. The Proposed Rules also provide a legal basis to these aspects of the Plan.

Rule 41 (Corporation Default)

The proposed Rule 41 ("Corporation Default Rule") would provide a mechanism for the termination, valuation and netting of unsettled, guaranteed CNS transactions in the event NSCC is unable to perform its obligations or otherwise suffers a defined event of default, such as entering insolvency proceedings. The proposed Corporation Default Rule would provide Members with transparency and certainty regarding what would happen if NSCC were to fail (defined in the proposed Rule as a "Corporation Default").

The proposed rule would define the events that would constitute a Corporation Default, which would generally include (1) the failure of NSCC to make any undisputed payment or delivery to a Member if such failure is not remedied within seven days after notice of such failure is given to NSCC; (2) NSCC is dissolved; (3) NSCC institutes a proceeding seeking a judgment of insolvency or bankruptcy, or a proceeding is instituted against it seeking a judgment of bankruptcy or insolvency and such judgment is entered; or (4) NSCC seeks or becomes subject to the appointment of a receiver, trustee or similar official pursuant to the federal securities laws or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act[49] for it or for all or substantially all of its assets.

Upon a Corporation Default, the proposed Corporation Default Rule would provide that all unsettled, guaranteed CNS transactions would be terminated and, no later than forty-five days from the date on which the event that constitutes a Corporation Default occurred (or "Default Date"), the Board would determine a single net amount owed by or to each Member with respect to such transactions pursuant to the valuation procedures set forth in the Proposed Rule. Essentially, for each affected position in a CNS Security, the "CNS Market Value" would be determined by using the Current Market Price for that security as determined in the CNS System as of the close of business on the next Business Day following the Default Date. NSCC would determine a "Net Contract Value" for each Member's net unsettled long or short position in a CNS Security by netting the Member's (i) contract price for such net position that, as of the Default Date, has not yet passed the Settlement Date, and (ii) the Current Market Price in the CNS System on the Default Date for its fail positions. To determine each Member's "CNS Close-out Value," (i) the Net Contract Value for each CUSIP would be subtracted from the CNS Market Value for such CUSIP, and (ii) the resulting difference for all CUSIPS in which the Member had a net long or short position would be summed, and would be netted and offset against any other amounts that may be due to or owing from the Member under the Rules. The proposed Corporation Default Rule would provide for notification to each Member of its CNS

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[49] 12 U.S.C. 5381-5394.

Close-out Value, and would also address interpretation of the Rules in relation to certain terms that are defined in the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA").[50]

NSCC believes this valuation approach, which is comparable to the approach adopted by other central counterparties, is appropriate for NSCC given the market in which NSCC operates and the volumes of transactions it processes in CNS, because it would provide for a common, clear and transparent valuation methodology and price per CUSIP applicable to all affected Members.

Rule 42 (Wind-down of the Corporation)

The proposed Rule 42 ("Wind-down Rule") would be adopted to facilitate the execution of the Wind-down Plan. The Wind-down Rule would include a proposed set of defined terms that would be applicable only to the provisions of this Proposed Rule. The Wind-down Rule would make clear that a wind-down of NSCC's business would occur (1) after a decision is made by the Board, and (2) in connection with the transfer of NSCC's services to a Transferee, as described therein. Generally, the proposed Wind-down Rule is designed to create clear mechanisms for the transfer of Eligible Members, Eligible Limited Members, and Settling Banks (as these terms would be defined in the Wind-down Rule), and NSCC's business, in order to provide for continued access to critical services and to minimize disruption to the markets in the event the Wind-down Plan is initiated.

*Wind-down Trigger.* First, the Proposed Rule would make clear that the Board is responsible for initiating the Wind-down Plan, and would identify the criteria the Board would consider when making this determination. As provided for in the Wind-down Plan and in the proposed Wind-down Rule, the Board would initiate the Plan if, in the exercise of its business judgment and subject to its fiduciary duties, it has determined that the execution of the Recovery Plan has not or is not likely to restore NSCC to viability as a going concern, and the implementation of the Wind-down Plan, including the transfer of NSCC's business, is in the best interests of NSCC, Members and Limited Members, its shareholders and creditors, and the U.S. financial markets.

*Identification of Critical Services; Designation of Dates and Times for Specific Actions.* The Proposed Rule would provide that, upon making a determination to initiate the Wind-down Plan, the Board would identify the critical and non-critical services that would be transferred to the Transferee at the Transfer Time (as defined below and in the Proposed Rule), as well as any non-critical services that would not be transferred to the Transferee. The proposed Wind-down Rule would establish that any services transferred to the Transferee will only be provided by the Transferee as of the Transfer Time, and that any non-critical services that are not transferred to the Transferee would be terminated at the Transfer Time. The Proposed Rule would also provide that the Board would establish (1) an effective time for the transfer of NSCC's business to a Transferee ("Transfer Time"), (2) the last day that transactions may be submitted to NSCC for

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[50] 12 U.S.C. 1811 et seq.

processing ("Last Transaction Acceptance Date"), and (3) the last day that transactions submitted to NSCC will be settled ("Last Settlement Date").

*Treatment of Pending Transactions.* The Wind-down Rule would also authorize the Board to provide for the settlement of pending transactions prior to the Transfer Time, so long as the Corporation Default Rule has not been triggered. For example, the Proposed Rule would provide the Board with the ability to, if it deems practicable, based on NSCC's resources at that time, allow pending transactions to complete prior to the transfer of NSCC's business to a Transferee. The Board would also have the ability to allow Members to only submit trades that would effectively offset pending positions or provide that transactions will be processed in accordance with special or exception processing procedures. The Proposed Rule is designed to enable these actions in order to facilitate settlement of pending transactions and reduce claims against NSCC that would have to be satisfied after the transfer has been effected. If none of these actions are deemed practicable (or if the Corporation Default Rule has been triggered), then the provisions of the proposed Corporation Default Rule would apply to the treatment of open, pending transactions.

The Proposed Rule would make clear, however, that NSCC would not accept any transactions for processing after the Last Transaction Acceptance Date or which are designated to settle after the Last Settlement Date. Any transactions to be processed and/or settled after the Transfer Time would be required to be submitted to the Transferee, and would not be NSCC's responsibility.

*Notice Provisions.* The proposed Wind-down Rule would provide that, upon a decision to implement the Wind-down Plan, NSCC would provide Members and Limited Members and its regulators with a notice that includes material information relating to the Wind-down Plan and the anticipated transfer of NSCC's membership and business, including, for example, (1) a brief statement of the reasons for the decision to implement the Wind-down Plan; (2) identification of the Transferee and information regarding the transaction by which the transfer of NSCC's business would be effected; (3) the Transfer Time, Last Transaction Acceptance Date, and Last Settlement Date; and (4) identification of Eligible Members and Eligible Limited Members, and the critical and non-critical services that would be transferred to the Transferee at the Transfer Time, as well as those Non-Eligible Members and Non-Eligible Limited Members (as defined in the Proposed Rule), and any non-critical services that would not be included in the transfer. NSCC would also make available the rules and procedures and membership agreements of the Transferee.

*Transfer of Membership.* The proposed Wind-down Rule would address the expected transfer of NSCC's membership to the Transferee, which NSCC would seek to effectuate by entering into an arrangement with a Failover Transferee, or by using commercially reasonable efforts to enter into such an arrangement with a Third Party Transferee. Therefore, the Wind-down Rule would provide Members, Limited Members and Settling Banks with notice that, in connection with the implementation of the Wind-down Plan and with no further action required by any party, (1) their membership with NSCC would transfer to the Transferee, (2) they would become party to a membership agreement with such Transferee, and (3) they would have all of the rights and be subject to all of the obligations applicable to their membership status under the rules of the Transferee. These provisions would not apply to any Member or Limited Member

that is either in default of an obligation to NSCC or has provided notice of its election to withdraw from membership. Further, the proposed Wind-down Rule would make clear that it would not prohibit (1) Members and Limited Members that are not transferred by operation of the Wind-down Rule from applying for membership with the Transferee, or (2) Members, Limited Members, and Settling Banks that would be transferred to the Transferee from withdrawing from membership with the Transferee.[51]

*Comparability Period.* The proposed automatic mechanism for the transfer of NSCC's membership is intended to provide NSCC's membership with continuous access to critical services in the event of NSCC's wind-down, and to facilitate the continued prompt and accurate clearance and settlement of securities transactions. Further to this goal, the proposed Wind-down Rule would provide that NSCC would enter into arrangements with a Failover Transferee, or would use commercially reasonable efforts to enter into arrangements with a Third Party Transferee, providing that, in either case, with respect to the critical services and any non-critical services that are transferred from NSCC to the Transferee, for at least a period of time to be agreed upon ("Comparability Period"), the business transferred from NSCC to the Transferee would be operated in a manner that is comparable to the manner in which the business was previously operated by NSCC. Specifically, the proposed Wind-down Rule would provide that: (1) the rules of the Transferee and terms of membership agreements would be comparable in substance and effect to the analogous Rules and membership agreements of NSCC; (2) the rights and obligations of any Members, Limited Members and Settling Banks that are transferred to the Transferee would be comparable in substance and effect to their rights and obligations as to NSCC; and (3) the Transferee would operate the transferred business and provide any services that are transferred in a comparable manner to which such services were provided by NSCC. The purpose of these provisions and the intended effect of the proposed Wind-down Rule is to facilitate a smooth transition of NSCC's business to a Transferee and to provide that, for at least the Comparability Period, the Transferee (1) would operate the transferred business in a manner that is comparable in substance and effect to the manner in which the business was operated by NSCC, and (2) would not require sudden and disruptive changes in the systems, operations and business practices of the new members of the Transferee.

*Subordination of Claims Provisions and Miscellaneous Matters.* The proposed Wind-down Rule would also include a provision addressing the subordination of unsecured claims against NSCC of Members and Limited Members who fail to participate in NSCC's recovery efforts (*i.e.,* such firms are delinquent in their obligations to NSCC or elect to retire from NSCC in order to minimize their obligations with respect to the allocation of losses, pursuant to the Rules). This provision is designed to incentivize Members to participate in NSCC's recovery efforts.[52]

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[51] The Members and Limited Members whose membership is transferred to the Transferee pursuant to the proposed Wind-down Rule would submit transactions to be processed and settled subject to the rules and procedures of the Transferee, including any applicable margin charges or other financial obligations.

[52] Nothing in the proposed Wind-down Rule would seek to prevent a Member, Limited Member or Settling Bank that retired its membership at NSCC from applying for

The proposed Wind-down Rule would address other ex-ante matters including provisions providing that Members, Limited Members and Settling Banks (1) will assist and cooperate with NSCC to effectuate the transfer of NSCC's business to a Transferee, (2) consent to the provisions of the rule, and (3) grant NSCC power of attorney to execute and deliver on their behalf documents and instruments that may be requested by the Transferee. Finally, the Proposed Rule would include a limitation of liability for any actions taken or omitted to be taken by NSCC pursuant to the Proposed Rule. The purpose of the limitation of liability is to facilitate and protect NSCC's ability to act expeditiously in response to extraordinary events. As noted, such limitation of liability would be available only following triggering of the Wind-down Plan. In addition, and as a separate matter, the limitation of liability provides Members with transparency for the unlikely situation when those extraordinary events could occur, as well supporting the legal framework within which NSCC would take such actions. These provisions, collectively, are designed to enable NSCC to take such acts as the Board determines necessary to effectuate an orderly transfer and wind-down of its business should recovery efforts prove unsuccessful.

Rule 60 (Market Disruption and Force Majeure)

The proposed Rule 60 ("Force Majeure Rule") would address NSCC's authority to take certain actions upon the occurrence, and during the pendency, of a "Market Disruption Event," as defined therein. The Proposed Rule is designed to clarify NSCC's ability to take actions to address extraordinary events outside of the control of NSCC and of its membership, and to mitigate the effect of such events by facilitating the continuity of services (or, if deemed necessary, the temporary suspension of services). To that end, under the proposed Force Majeure Rule, NSCC would be entitled, during the pendency of a Market Disruption Event, to (1) suspend the provision of any or all services, and (2) take, or refrain from taking, or require Members and Limited Members to take, or refrain from taking, any actions it considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of NSCC's services as may be practicable.

The proposed Force Majeure Rule would identify the events or circumstances that would be considered a "Market Disruption Event," including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which NSCC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems. The proposed Force Majeure Rule would define the governance procedures for how NSCC would determine whether, and how, to implement the provisions of the rule. A determination that a Market Disruption Event has occurred would generally be made by the Board, but the Proposed Rule would provide for limited, interim delegation of authority to a specified officer or management committee if the Board would not be able to take timely action. In the event such delegated authority is exercised, the proposed Force Majeure Rule would require that the Board be convened as promptly as practicable, no later than five Business Days

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membership with the Transferee. Once its NSCC membership is terminated, however, such firm would not be able to benefit from the membership assignment that would be effected by this proposed Wind-down Rule, and it would have to apply for membership directly with the Transferee, subject to its membership application and review process.

after such determination has been made, to ratify, modify, or rescind the action. The proposed Force Majeure Rule would also provide for prompt notification to the Commission, and advance consultation with Commission staff, when practicable, including notification when an event is no longer continuing and the relevant actions are terminated. The Proposed Rule would require Members and Limited Members to notify NSCC immediately upon becoming aware of a Market Disruption Event, and, likewise, would require NSCC to notify Members and Limited Members if it has triggered the Proposed Rule and of actions taken or intended to be taken thereunder.

Finally, the Proposed Rule would address other related matters, including a limitation of liability for any failure or delay in performance, in whole or in part, arising out of the Market Disruption Event. The purpose of the limitation of liability would be similar to the purpose of the analogous provision in the proposed Wind-down Rule, which is to facilitate and protect NSCC's ability to act expeditiously in response to extraordinary events.

Proposed Change to the Rule Numbers

In order to align the order of the Proposed Rules with the order of comparable rules in the rulebooks of the other Clearing Agencies, NSCC is also proposing to re-number the current Rule 42 (Wind-down of a Member, Fund Member or Insurance Carrier/Retirement Services Member) to Rule 40, which is currently reserved for future use, as shown on Exhibit 5b, hereto.

*Expected Effect on and Management of Risk*

NSCC believes the proposal to adopt the R&W Plan and the Proposed Rules would enable it to better manage its risks. As described above, the Recovery Plan would identify the recovery tools and the risk management activities that NSCC may use to address risks of uncovered losses or shortfalls resulting from a Member default and losses arising from non-default events. By creating a framework for its management of risks across an evolving stress scenario and providing a roadmap for actions it may employ to monitor and, as needed, stabilize its financial condition, the Recovery Plan would strengthen NSCC's ability to manage risk. The Wind-down Plan would also enable NSCC to better manage its risks by establishing the strategy and framework for its orderly wind-down and the transfer of NSCC's business when the Wind-down Plan is triggered. By creating clear mechanisms for the transfer of NSCC's membership and business, the Wind-down Plan would facilitate continued access to NSCC's critical services and minimize market impact of the transfer and enable NSCC to better manage risks related to its wind-down.

NSCC believes the Proposed Rules would enable it to better manage its risks by facilitating, and providing a legal basis for, the implementation of critical aspects of the R&W Plan. The Proposed Rules would provide Members and Limited Members with transparency around those provisions of the R&W Plan that relate to their and NSCC's rights, responsibilities and obligations. Therefore, NSCC believes the Proposed Rules would enable it to better manage its risks by providing this transparency and creating certainty, to the extent practicable, around the occurrence of a Market Disruption Event or a Corporation Default (as such terms are defined in the respective Proposed Rules), and around the implementation of the Wind-down Plan.

*Consistency with the Clearing Supervision Act*

The stated purpose of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act"), is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[53] Section 805(a)(2) of the Clearing Supervision Act[54] also authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities, like NSCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[55] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.

NSCC believes that the proposal is consistent with Section 805(b) of the Clearing Supervision Act because it is designed to address each of these objectives. The Recovery Plan and the proposed Force Majeure Rule would promote robust risk management and would reduce systemic risks by providing NSCC with a roadmap for actions it may employ to monitor and manage its risks, and, as needed, to stabilize its financial condition in the event those risks materialize. Further, the Recovery Plan would identify the triggers of recovery tools, but would not provide that those triggers necessitate the use of those tools. Instead, the Recovery Plan would provide that the triggers of these tools lead to escalation to an appropriate management body, which would have the authority and flexibility to respond appropriately to the situation. Essentially, the Recovery Plan and the proposed Force Majeure Rule are designed to minimize losses to both NSCC and Members by giving NSCC the ability to determine the most appropriate way to address each stress situation. This approach would allow for proper evaluation of the situation and the possible impacts of the use of the available recovery tools in order to minimize the negative effects of the stress situation, and would reduce systemic risks related to the implementation of the Recovery Plan and the underlying recovery tools.

The Wind-down Plan and the proposed Corporation Default Rule and Wind-down Rule, which would facilitate the implementation of the Wind-down Plan, would promote safety and soundness and would support the stability of the broader financial system, because they would establish a framework for the orderly wind-down of NSCC's business and would set forth clear mechanics for the transfer of its critical services and membership, as well as clear provisions concerning the treatment of open, guaranteed CNS transactions in the event of NSCC's default. By designing the Wind-down Plan and these Proposed Rules to enable the continuity of NSCC's critical services and membership, NSCC believes they would promote safety and soundness and

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[53] 12 U.S.C. 5461(b).

[54] Id. at 5464(a)(2).

[55] Id. at 5464(b).

would support stability in the broader financial system in the event the Wind-down Plan is implemented.

By assisting NSCC to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system, as described above, NSCC believes the proposal is consistent with Section 805(b) of the Clearing Supervision Act.[56]

NSCC also believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes that the R&W Plan, each of the Proposed Rules, and the proposed change to Rule numbers are consistent with Section 17A(b)(3)(F) of the Act,[57] the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad-22(e)(3)(ii) under the Act,[58] and the R&W Plan is consistent with Rule 17Ad-22(e)(15)(ii) under the Act,[59] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of NSCC be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.[60] The Recovery Plan and the proposed Force Majeure Rule would promote the prompt and accurate clearance and settlement of securities transactions by providing NSCC with a roadmap for actions it may employ to mitigate losses, and monitor and, as needed, stabilize, its financial condition, which would allow it to continue its critical clearance and settlement services in stress situations. Further, as described above, the Recovery Plan is designed to identify the actions and tools NSCC may use to address and minimize losses to both NSCC and Members. The Recovery Plan and the proposed Force Majeure Rule would provide NSCC's management and the Board with guidance in this regard by identifying the indicators and governance around the use and application of such tools to enable them to address stress situations in a manner most appropriate for the circumstances. Therefore, the Recovery Plan and the proposed Force Majeure Rule would also contribute to the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible by enabling actions that would address and minimize losses.

The Wind-down Plan and the proposed Corporation Default Rule and Wind-down Rule, which would both facilitate the implementation of the Wind-down Plan, would also 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 NSCC or for which it is responsible. The Wind-down Plan and the proposed Corporation Default Rule and Wind-

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56 Id.

57 15 U.S.C. 78q-1(b)(3)(F).

58 17 CFR 240.17Ad-22(e)(3)(ii).

59 Id. at 240.17Ad-22(e)(15)(ii).

60 15 U.S.C. 78q-1(b)(3)(F).

down Rule would collectively establish a framework for the transfer and orderly wind-down of NSCC's business. These proposals would establish clear mechanisms for the transfer of NSCC's critical services and membership, and for the treatment of open, guaranteed CNS transactions in the event of NSCC's default. By doing so, the Wind-down Plan and these Proposed Rules are designed to facilitate the continuity of NSCC's critical services and enable Members and Limited Members to maintain access to NSCC's services through the transfer of its membership in the event NSCC defaults or the Wind-down Plan is triggered by the Board. Therefore, by facilitating the continuity of NSCC's critical clearance and settlement services, NSCC believes the proposals would promote the prompt and accurate clearance and settlement of securities transactions. Further, by creating a framework for the transfer and orderly wind-down of NSCC's business, NSCC believes the proposals would enhance the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.

Finally, the proposed change to the Rule numbers would align the order of the Proposed Rules with the order of comparable rules in the rulebooks of the other Clearing Agencies. Therefore, NSCC believes the proposed change would create ease of reference, particularly for Members that are also participants of the other Clearing Agencies, and, as such, would assist in promoting the prompt and accurate clearance and settlement of securities transactions.

Therefore, NSCC believes the R&W Plan, each of the Proposed Rules, and the proposed change to Rule numbers are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[61]

Rule 17Ad-22(e)(3)(ii) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[62] The R&W Plan and the Proposed Rules are designed to meet the requirements of Rule 17Ad-22(e)(3)(ii).[63]

The R&W Plan would be maintained by NSCC in compliance with Rule 17Ad-22(e)(3)(ii) in that it provides plans for the recovery and orderly wind-down of NSCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described above.[64] Specifically, the Recovery Plan would define the risk management activities, stress conditions and indicators, and tools that NSCC may use to address stress scenarios that could eventually prevent it from being able to provide its critical services as a going concern. Through the framework of the Crisis Continuum, the Recovery Plan would

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61 Id.

62 17 CFR 240.17Ad-22(e)(3)(ii).

63 Id.

64 Id.

address measures that NSCC may take to address risks of credit losses and liquidity shortfalls, and other losses that could arise from a Member default. The Recovery Plan would also address the management of general business risks and other non-default risks that could lead to losses.

The Wind-down Plan would be triggered by a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning NSCC to viability as a going concern. Once triggered, the Wind-down Plan would set forth clear mechanisms for the transfer of NSCC's membership and business, and would be designed to facilitate continued access to NSCC's critical services and to minimize market impact of the transfer. By establishing the framework and strategy for the execution of the transfer and wind-down of NSCC in order to facilitate continuous access to NSCC's critical services, the Wind-down Plan establishes a plan for the orderly wind-down of NSCC. Therefore, NSCC believes the R&W Plan would provide plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, and, as such, meets the requirements of Rule 17Ad-22(e)(3)(ii).[65]

As described in greater detail above, the Proposed Rules are designed to facilitate the execution of the R&W Plan, provide Members and Limited Members with transparency regarding the material provisions of the Plan, and provide NSCC with a legal basis for implementation of those provisions. As such, NSCC also believes the Proposed Rules meet the requirements of Rule 17Ad-22(e)(3)(ii).[66]

NSCC has evaluated the recovery tools that would be identified in the Recovery Plan and has determined that these tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to NSCC's Members to manage the risks they present. The recovery tools, as outlined in the Recovery Plan and in the proposed Force Majeure Rule, provide NSCC with a comprehensive set of options to address its material risks and support the resiliency of its critical services under a range of stress scenarios. NSCC also believes the recovery tools are effective, as NSCC has both legal basis and operational capability to execute these tools in a timely and reliable manner. Many of the recovery tools are provided for in the Rules; Members are bound by the Rules through their membership agreements with NSCC, and the Rules are adopted pursuant to a framework established by Rule 19b-4 under the Act,[67] providing a legal basis for the recovery tools found therein. Other recovery tools have legal basis in contractual arrangements to which NSCC is a party, as described above. Further, as many of the tools are embedded in NSCC's ongoing risk management practices or are embedded into its predefined default-management procedures, NSCC is able to execute these tools, in most cases, when needed and without material operational or organizational delay.

The majority of the recovery tools are also transparent, as they are, or are proposed to be, included in the Rules, which are publicly available. NSCC believes the recovery tools also provide appropriate incentives to the Members, as they are designed to control the amount of risk

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65 Id.

66 Id.

67 Id. at 240.19b-4.

they present to NSCC's clearance and settlement system. Members' financial obligations to NSCC, particularly their Required Deposits to the Clearing Fund, are measured by the risk posed by the Members' activity in NSCC's systems, which incentivizes them to manage that risk which would correspond to lower financial obligations. Finally, NSCC's Recovery Plan provides for a continuous evaluation of the systemic consequences of executing its recovery tools, with the goal of minimizing their negative impact. The Recovery Plan would outline various indicators over a timeline of increasing stress, the Crisis Continuum, with escalation triggers to NSCC management or the Board, as appropriate. This approach would allow for timely evaluation of the situation and the possible impacts of the use of a recovery tool in order to minimize the negative effects of the stress scenario. Therefore, NSCC believes that the recovery tools that would be identified and described in its Recovery Plan, including the authority provided to it in the proposed Force Majeure Rule, would meet the criteria identified within guidance published by the Commission in connection with the adoption of Rule 17Ad-22(e)(3)(ii).[68]

Therefore, NSCC believes the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad-22(e)(3)(ii).[69]

Rule 17Ad-22(e)(15)(ii) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient LNA to cover potential general business losses so that NSCC can continue operations and services as a going concern if those losses materialize, including by holding LNA equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency.[70] While the Capital Policy addresses how NSCC holds LNA in compliance with these requirements, the Wind-down Plan would include an analysis that would estimate the amount of time and the costs to achieve a recovery or orderly wind-down of NSCC's critical operations and services, and would provide that the Board review and approve this analysis and estimation annually. The Wind-down Plan would also provide that the estimate would be the "Recovery/Wind-down Capital Requirement" under the Capital Policy. Under that policy, the General Business Risk Capital Requirement, which is the sufficient amount of LNA that NSCC should hold to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize, is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement. Therefore, NSCC believes the R&W Plan, as it interrelates with the Capital Policy, is consistent with Rule 17Ad-22(e)(15)(ii).[71]

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68 Supra note 41.

69 17 CFR 240.17Ad-22(e)(3)(ii).

70 Id. at 240.17Ad-22(e)(15)(ii).

71 Id.

**11. Exhibits**

Exhibit 1 Not applicable.

Exhibit 1A Notice of proposal for publication in the Federal Register.

Exhibit 2 Not applicable.

Exhibit 3 Not applicable.

Exhibit 4 R&W Plan (marked). **Omitted and filed separately with the Commission. Confidential treatment of this Exhibit 4 pursuant to 17 CFR 240.24b-2 being requested.**

Exhibit 5a R&W Plan (revised). **Omitted and filed separately with the Commission. Confidential treatment of this Exhibit 5a pursuant to 17 CFR 240.24b-2 being requested.**

Exhibit 5b Proposed changes to the Rules.

**SR-NSCC-2017-805 Amendment No. 1**
**EXHIBIT 1A**

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-NSCC-2017-805)

[DATE]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Amendment No. 1 to Advance Notice to Adopt the Recovery & Wind-down Plan and Related Rules

On December 18, 2017, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") an advance notice to adopt the Recovery & Wind-down Plan and related rules (SR-NSCC-2017-805) ("Advance Notice"), pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")[1] and Rule 19b-4(n)(1)(i) of the Act.[2] On January 30, 2018, the Commission published in the Federal

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1 12 U.S.C. 5465(e)(1).

2 17 CFR 240.19b-4(n)(1)(i). On December 18, 2017, NSCC filed this proposal as a proposed rule change (SR-NSCC-2017-017) with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4 ("Proposed Rule Change"). The Proposed Rule Change was published in the Federal Register on January 8, 2018. See Securities Exchange Act Release No. 82430 (January 2, 2018), 83 FR 841 (January 8, 2018) (SR-NSCC-2017-017). On February 8, 2018, 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. See Securities Exchange Act Release No. 82669 (February 8, 2018), 83 FR 6653 (February 14, 2018) (SR-NSCC-2017-017). On March 20, 2018, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act (15 U.S.C. 78s(b)(2)(B)) to determine whether to approve or disapprove the Proposed Rule Change. See Securities Exchange Act Release No. 82908 (March 20, 2018), 83 FR 12986 (March 26, 2018) (SR-NSCC-2017-017). The Commission did not receive any comments on the Proposed Rule Change.

Register notices of filing of the Advance Notice.[3] These notices also extended the review period for the Advance Notice pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act.[4] On April 10, 2018, the Commission required further information for consideration of the Advance Notice, pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, which provided the Commission with a renewed 60-day review period beginning on the date that the information requested is received by the Commission.[5] As of the date of this release, the Commission has not yet received the requested information.

Notice is hereby given that on June __, 2018, NSCC filed with the Commission Amendment No. 1 to the Advance Notice, which superseded and replaced the Advance Notice, as described below. The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

The Advance Notice of NSCC proposes to (1) adopt the Recovery & Wind-down Plan of NSCC ("R&W Plan" or "Plan"); and (2) amend NSCC's Rules & Procedures ("Rules")[6] in order to adopt Rule 41 (Corporation Default), Rule 42 (Wind-down of the Corporation), and Rule 60 (Market Disruption and Force Majeure) (each a "Proposed Rule" and, collectively, the "Proposed Rules"). The Advance Notice would also propose

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3 See Securities Exchange Act Release No. 82581 (January 24, 2018), 83 FR 4327 (January 30, 2018) (SR-NSCC-2017-805).

4 12 U.S.C. 5465(e)(1)(H).

5 12 U.S.C. 5465(e)(1)(D).

6 Capitalized terms used herein and not otherwise defined herein are defined in the Rules, available at www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.

to re-number the current Rule 42 (Wind-down of a Member, Fund Member or Insurance Carrier/Retirement Services Member) to Rule 40, which is currently reserved for future use.

The R&W Plan would be maintained by NSCC in compliance with Rule 17Ad-22(e)(3)(ii) under the Act by providing plans for the recovery and orderly wind-down of NSCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described below.[7] The Proposed Rules are designed to (1) facilitate the implementation of the R&W Plan when necessary and, in particular, allow NSCC to effectuate its strategy for winding down and transferring its business; (2) provide Members and Limited Members with transparency around critical provisions of the R&W Plan that relate to their rights, responsibilities and obligations; and (3) provide NSCC with the legal basis to implement those provisions of the R&W Plan when necessary, as described below.

## II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

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[7] 17 CFR 240.17Ad-22(e)(3)(ii).

(A) Clearing Agency's Statement on Comments on the Advance Notice Received from Members, Participants, or Others

While NSCC has not solicited or received any written comments relating to this proposal, NSCC has conducted outreach to Members in order to provide them with notice of the proposal. NSCC will notify the Commission of any written comments received by NSCC.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

*Description of Amendment No. 1*

This filing constitutes Amendment No. 1 ("Amendment") to the Advance Notice (also referred to below as the "Original Filing") previously filed by NSCC.[8] NSCC is amending the proposed R&W Plan and the Original Filing in order to clarify certain matters and make minor technical and conforming changes to the R&W Plan, as described below and as marked on Exhibit 4 hereto. To the extent such changes to the Plan require changes to the Original Filing, the information provided under "*Description of Proposed Changes*" in the Original Filing has been amended and is restated in its entirety below. Other sections of the Original Filing are unchanged and are restated in their entity for convenience.

First, this Amendment would clarify the meaning of the terms "cease to act," "Member default," "Defaulting Member," and "Member Default Losses" as such terms are used in the Plan. This Amendment would also make conforming changes as necessary to reflect the use of these terms.

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[8] See Securities Exchange Act Release No. 82581 (January 24, 2018), 83 FR 4327 (January 30, 2018) (SR-NSCC-2017-805).

Second, this Amendment would clarify that actions and tools described in the Plan that are available in one phase of the Crisis Continuum may be used in subsequent phases of the Crisis Continuum when appropriate to address the applicable situation. This Amendment would also clarify that the allocation of losses resulting from a Member default would be applied when provided for, and in accordance with, Rule 4 of the Rules.

Third, this Amendment would clarify that the Recovery Corridor (as defined therein) is not a "sub-phase" of the recovery phase. Rather, the Recovery Corridor is a period of time that would occur toward the end of the Member default phase, when indicators are that NSCC may transition into the recovery phase. Thus, the Recovery Corridor precedes the recovery phase within the Crisis Continuum.

Fourth, this Amendment would make revisions to address the allocation of losses resulting from a Member default in order to more closely conform such statements to the changes proposed by the Loss Allocation Filing, as defined below.

Fifth, this Amendment would clarify the notifications that NSCC would be required to make under the Proposed Rule 60 (Market Disruption and Force Majeure).

Finally, this Amendment would make minor, technical and conforming revisions to correct typographical errors and to simplify descriptions. For example, such revisions would use lower case for terms that are not defined therein, and would use upper case for terms that are defined. The Amendment would also simplify certain descriptions by removing extraneous words and statements that are repetitive. These minor, technical revisions would not alter the substance of the proposal.

*Description of Proposed Changes*

NSCC is proposing to adopt the R&W Plan to be used by the Board and management of NSCC in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would identify (i) the recovery tools available to NSCC to address the risks of (a) uncovered losses or liquidity shortfalls resulting from the default of one or more Members, and (b) losses arising from non-default events, such as damage to its physical assets, a cyber-attack, or custody and investment losses, and (ii) the strategy for implementation of such tools. The R&W Plan would also establish the strategy and framework for the orderly wind-down of NSCC and the transfer of its business in the remote event the implementation of the available recovery tools does not successfully return NSCC to financial viability.

As discussed in greater detail below, the R&W Plan would provide, among other matters, (i) an overview of the business of NSCC and its parent, The Depository Trust & Clearing Corporation ("DTCC"); (ii) an analysis of NSCC's intercompany arrangements and critical links to other financial market infrastructures ("FMIs"); (iii) a description of NSCC's services, and the criteria used to determine which services are considered critical; (iv) a description of the NSCC and DTCC governance structure; (v) a description of the governance around the overall recovery and wind-down program; (vi) a discussion of tools available to NSCC to mitigate credit/market and liquidity risks, including recovery indicators and triggers, and the governance around management of a stress event along a "Crisis Continuum" timeline; (vii) a discussion of potential non-default losses and the resources available to NSCC to address such losses, including recovery

triggers and tools to mitigate such losses; (viii) an analysis of the recovery tools' characteristics, including how they are comprehensive, effective, and transparent, how the tools provide appropriate incentives to Members to, among other things, control and monitor the risks they may present to NSCC, and how NSCC seeks to minimize the negative consequences of executing its recovery tools; and (ix) the framework and approach for the orderly wind-down and transfer of NSCC's business, including an estimate of the time and costs to effect a recovery or orderly wind-down of NSCC.

The R&W Plan would be structured as a roadmap, and would identify and describe the tools that NSCC may use to effect a recovery from the events and scenarios described therein. Certain recovery tools that would be identified in the R&W Plan are based in the Rules (including the Proposed Rules) and, as such, descriptions of those tools would include descriptions of, and reference to, the applicable Rules and any related internal policies and procedures. Other recovery tools that would be identified in the R&W Plan are based in contractual arrangements to which NSCC is a party, including, for example, existing committed or pre-arranged liquidity arrangements. Further, the R&W Plan would state that NSCC may develop further supporting internal guidelines and materials that may provide operationally for matters described in the Plan, and that such documents would be supplemental and subordinate to the Plan.

Key factors considered in developing the R&W Plan and the types of tools available to NSCC were its governance structure and the nature of the markets within which NSCC operates. As a result of these considerations, many of the tools available to NSCC that would be described in the R&W Plan are NSCC's existing, business-as-usual risk management and Member default management tools, which would continue to be

applied in scenarios of increasing stress. In addition to these existing, business-as-usual tools, the R&W Plan would describe NSCC's other principal recovery tools, which include, for example, (i) identifying, monitoring and managing general business risk and holding sufficient liquid net assets funded by equity ("LNA") to cover potential general business losses pursuant to the Clearing Agency Policy on Capital Requirements ("Capital Policy"),[9] (ii) maintaining the Clearing Agency Capital Replenishment Plan ("Replenishment Plan") as a viable plan for the replenishment of capital should NSCC's equity fall close to or below the amount being held pursuant to the Capital Policy,[10] and (iii) the process for the allocation of losses among Members, as provided in Rule 4.[11] The R&W Plan would provide governance around the selection and implementation of the recovery tool or tools most relevant to mitigate a stress scenario and any applicable loss or liquidity shortfall.

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9 See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR-DTC-2017-003, SR-FICC-2017-007, SR-NSCC-2017-004).

10 See id.

11 See Rule 4 (Clearing Fund), supra note 6. NSCC is proposing changes to Rule 4 and other related rules regarding allocation of losses in a separate filing submitted simultaneously with the Original Filing. See Securities Exchange Act Release Nos. 82430 (January 2, 2018), 83 FR 841 (January 8, 2018) (SR-NSCC-2017-017) and 82581 (January 24, 2018), 83 FR 4327 (January 30, 2018) (SR-NSCC-2017-805) (collectively referred to herein as the "Loss Allocation Filing"). NSCC has submitted an amendment to the Loss Allocation Filing. A copy of the amendment to the Loss Allocation Filing is available at http://www.dtcc.com/legal/sec-rule-filings.aspx. NSCC expects the Commission to review both proposals, as amended, together, and, as such, the proposal described in this filing anticipates the approval and implementation of those proposed changes to the Rules.

The development of the R&W Plan is facilitated by the Office of Recovery & Resolution Planning ("R&R Team") of DTCC.[12] The R&R Team reports to the DTCC Management Committee ("Management Committee") and is responsible for maintaining the R&W Plan and for the development and ongoing maintenance of the overall recovery and wind-down planning process. The Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, would review and approve the R&W Plan biennially, and would also review and approve any changes that are proposed to the R&W Plan outside of the biennial review.

As discussed in greater detail below, the Proposed Rules would define the procedures that may be employed in the event of NSCC's default and its wind-down, and would provide for NSCC's authority to take certain actions on the occurrence of a "Market Disruption Event," as defined therein. Significantly, the Proposed Rules would provide Members and Limited Members with transparency and certainty with respect to these matters. The Proposed Rules would facilitate the implementation of the R&W Plan, particularly NSCC's strategy for winding down and transferring its business, and would provide NSCC with the legal basis to implement those aspects of the R&W Plan.

***NSCC R&W Plan***

The R&W Plan is intended to be used by the Board and NSCC's management in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would be structured to provide a roadmap, define the strategy, and identify the tools available to NSCC to either

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[12] DTCC operates on a shared services model with respect to NSCC and its other subsidiaries. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a subsidiary, including NSCC.

(i) recover in the event it experiences losses that exceed its prefunded resources (such strategies and tools referred to herein as the "Recovery Plan") or (ii) wind-down its business in a manner designed to permit the continuation of its critical services in the event that such recovery efforts are not successful (such strategies and tools referred to herein as the "Wind-down Plan"). The description of the R&W Plan below is intended to highlight the purpose and expected effects of the material aspects of the R&W Plan, and to provide Members and Limited Members with appropriate transparency into these features.

Business Overview, Critical Services, and Governance

The introduction to the R&W Plan would identify the document's purpose and its regulatory background, and would outline a summary of the Plan. The stated purpose of the R&W Plan is that it is to be used by the Board and NSCC management in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would be maintained by NSCC in compliance with Rule 17Ad-22(e)(3)(ii) under the Act[13] by providing plans for the recovery and orderly wind-down of NSCC.

The R&W Plan would describe DTCC's business profile, provide a summary of NSCC's services, and identify the intercompany arrangements and links between NSCC and other entities, including other FMIs. This overview section would provide a context for the R&W Plan by describing NSCC's business, organizational structure and critical links to other entities. By providing this context, this section would facilitate the analysis of the potential impact of utilizing the recovery tools set forth in later sections of the

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[13] 17 CFR 240.17Ad-22(e)(3)(ii).

Recovery Plan, and the analysis of the factors that would be addressed in implementing the Wind-down Plan.

DTCC is a user-owned and user-governed holding company and is the parent company of NSCC and its affiliates, The Depository Trust Company ("DTC") and Fixed Income Clearing Corporation ("FICC", and, together with NSCC and DTC, the "Clearing Agencies"). The Plan would describe how corporate support services are provided to NSCC from DTCC and DTCC's other subsidiaries through intercompany agreements under a shared services model.

The Plan would provide a description of established links between NSCC and other FMIs, including The Options Clearing Corporation ("OCC"), CDS Clearing and Depository Services Inc. ("CDS"), and DTC. For example, the arrangement between NSCC and OCC governs the process by which OCC submits transactions to NSCC for settlement, and sets the time when the settlement obligations and the central counterparty trade guaranty shifts from OCC to NSCC with respect to these transactions.[14] The arrangement with CDS enables participants of CDS to clear and settle OTC trades with U.S. broker-dealers through subaccounts maintained by CDS through its own membership with NSCC.[15] The interface between DTC and NSCC permits transactions to flow between DTC's system and NSCC's Continuous Net Settlement ("CNS") system

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[14] See Securities Exchange Act Release Nos. 81266 (July 31, 2017), 82 FR 36484 (August 4, 2017) (SR-NSCC-2017-007, SR-OCC-2017-013); 81260 (July 31, 2017), 82 FR 36476 (August 4, 2017) (SR-NSCC-2017-803, SR-OCC-2017-804); Procedure III (Trade Recording Service (Interface with Qualified Clearing Agencies)), supra note 6.

[15] See Rule 61 (International Links), supra note 6.

in a collateralized environment.[16] NSCC's CNS relies on this interface with DTC for the book-entry movement of securities to settle transactions. This section of the Plan, identifying and briefly describing NSCC's established links, would provide a mapping of critical connections and dependencies that may need to be relied on or otherwise addressed in connection with the implementation of either the Recovery Plan or the Wind-down Plan.

The Plan would define the criteria for classifying certain of NSCC's services as "critical," and would identify those critical services and the rationale for their classification. This section would provide an analysis of the potential systemic impact from a service disruption, and is important for evaluating how the recovery tools and the wind-down strategy would facilitate and provide for the continuation of NSCC's critical services to the markets it serves. The criteria that would be used to identify an NSCC service or function as critical would include consideration as to (1) whether there is a lack of alternative providers or products; (2) whether failure of the service could impact NSCC's ability to perform its central counterparty services; (3) whether failure of the service could impact NSCC's ability to perform its netting services, and, as such, the availability of market liquidity; and (4) the service is interconnected with other participants and processes within the U.S. financial system, for example, with other FMIs, settlement banks, broker-dealers, and exchanges. The Plan would then list each of those services, functions or activities that NSCC has identified as "critical" based on the applicability of these four criteria. Such critical services would include, for example,

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[16] See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation), supra note 6.

trade capture and recording through the Universal Trade Capture system,[17] services supporting Correspondent Clearing relationships,[18] the CNS system,[19] the Balance Order Netting system,[20] Mutual Funds Services,[21] and the settlement of money payments with respect to transactions processed by NSCC.[22] The R&W Plan would also include a non-exhaustive list of NSCC services that are not deemed critical.

The evaluation of which services provided by NSCC are deemed critical is important for purposes of determining how the R&W Plan would facilitate the continuity of those services. As discussed further below, while NSCC's Wind-down Plan would provide for the transfer of all critical services to a transferee in the event NSCC's wind-down is implemented, it would anticipate that any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership, would also be transferred.

The Plan would describe the governance structure of both DTCC and NSCC. This section of the Plan would identify the ownership and governance model of these entities at both the Board of Directors and management levels. The Plan would state that

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17 See Rule 7 (Comparison and Trade Recording Operation) and Procedure II (Trade Comparison and Recording Service), supra note 6.

18 See Procedure IV (Special Representative Service), supra note 6.

19 See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation), supra note 6.

20 See Rule 8 (Balance Order and Foreign Security Systems) and Procedure V (Balance Order Accounting Operation), supra note 6.

21 See Rule 52 (Mutual Funds Services), supra note 6.

22 See Rule 12 (Settlement) and Procedure VIII (Money Settlement Service), supra note 6.

the stages of escalation required to manage recovery under the Recovery Plan or to invoke NSCC's wind-down under the Wind-down Plan would range from relevant business line managers up to the Board through NSCC's governance structure. The Plan would then identify the parties responsible for certain activities under both the Recovery Plan and the Wind-down Plan, and would describe their respective roles. The Plan would identify the Risk Committee of the Board ("Board Risk Committee") as being responsible for oversight of risk management activities at NSCC, which include focusing on both oversight of risk management systems and processes designed to identify and manage various risks faced by NSCC, and, due to NSCC's critical role in the markets in which it operates, oversight of NSCC's efforts to mitigate systemic risks that could impact those markets and the broader financial system.[23] The Plan would identify the DTCC Management Risk Committee ("Management Risk Committee") as primarily responsible for general, day-to-day risk management through delegated authority from the Board Risk Committee. The Plan would state that the Management Risk Committee has delegated specific day-to-day risk management, including management of risks addressed through margining systems and related activities, to the DTCC Group Chief Risk Office ("GCRO"), which works with staff within the DTCC Financial Risk Management group. Finally, the Plan would describe the role of the Management Committee, which provides overall direction for all aspects of NSCC's business, technology, and operations and the functional areas that support these activities.

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[23] The charter of the Board Risk Committee is available at http://www.dtcc.com/~/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Risk-Committee-Charter.pdf.

The Plan would describe the governance of recovery efforts in response to both default losses and non-default losses under the Recovery Plan, identifying the groups responsible for those recovery efforts. Specifically, the Plan would state that the Management Risk Committee provides oversight of actions relating to the default of a Member, which would be reported and escalated to it through the GCRO, and the Management Committee provides oversight of actions relating to non-default events that could result in a loss, which would be reported and escalated to it from the DTCC Chief Financial Officer ("CFO") and the DTCC Treasury group that reports to the CFO, and from other relevant subject matter experts based on the nature and circumstances of the non-default event.[24] More generally, the Plan would state that the type of loss and the nature and circumstances of the events that lead to the loss would dictate the components of governance to address that loss, including the escalation path to authorize those actions. As described further below, both the Recovery Plan and the Wind-down Plan would describe the governance of escalations, decisions, and actions under each of those plans.

Finally, the Plan would describe the role of the R&R Team in managing the overall recovery and wind-down program and plans for each of the Clearing Agencies.

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[24] The Plan would state that these groups would be involved to address how to mitigate the financial impact of non-default losses, and in recommending mitigating actions, the Management Committee would consider information and recommendations from relevant subject matter experts based on the nature and circumstances of the non-default event. Any necessary operational response to these events, however, would be managed in accordance with applicable incident response/business continuity process; for example, processes established by the DTCC Technology Risk Management group would be followed in response to a cyber event.

NSCC Recovery Plan

The Recovery Plan is intended to be a roadmap of those actions that NSCC may employ to monitor and, as needed, stabilize its financial condition. As each event that could lead to a financial loss could be unique in its circumstances, the Recovery Plan would not be prescriptive and would permit NSCC to maintain flexibility in its use of identified tools and in the sequence in which such tools are used, subject to any conditions in the Rules or the contractual arrangement on which such tool is based. NSCC's Recovery Plan would consist of (1) a description of the risk management surveillance, tools, and governance that NSCC would employ across evolving stress scenarios that it may face as it transitions through a "Crisis Continuum," described below; (2) a description of NSCC's risk of losses that may result from non-default events, and the financial resources and recovery tools available to NSCC to manage those risks and any resulting losses; and (3) an evaluation of the characteristics of the recovery tools that may be used in response to either default losses or non-default losses, as described in greater detail below. In all cases, NSCC would act in accordance with the Rules, within the governance structure described in the R&W Plan, and in accordance with applicable regulatory oversight to address each situation in order to best protect NSCC, Members, and the markets in which it operates.

*Managing Member Default Losses and Liquidity Needs Through the Crisis Continuum.* The Recovery Plan would describe the risk management surveillance, tools, and governance that NSCC may employ across an increasing stress environment, which is referred to as the "Crisis Continuum." This description would identify those tools that can be employed to mitigate losses, and mitigate or minimize liquidity needs, as the

market environment becomes increasingly stressed. The phases of the Crisis Continuum would include (1) a stable market phase, (2) a stress market phase, (3) a phase commencing with NSCC's decision to cease to act for a Member or Affiliated Family of Members (referred to in the Plan as the " Member default phase"),[25] and (4) a recovery phase. This section of the Recovery Plan would address conditions and circumstances relating to NSCC's decision to cease to act for a Member pursuant to the Rules.[26] In the Plan, "cease to act" and the events that may lead to such decision, are used within the context of Rule 46 of the Rules.[27] Further, for ease of reference, the R&W Plan would, for purposes of the Plan, use the term "Member default" to refer to the event or events that precipitate NSCC ceasing to act for a Member or an Affiliated Family, would use the term "Defaulting Member" to refer to a Member for which NSCC has ceased to act, and would use the term "Member Default Losses" to refer to losses that arise out of or relate to the Member default (including any losses that arise from liquidation of that Member's portfolio), and to distinguish such losses from those that arise out of the business or other events not related to a Member default, which are separately addressed in the Plan.

The Recovery Plan would provide context to its roadmap through this Crisis Continuum by describing NSCC's ongoing management of credit, market and liquidity risk, and its existing process for measuring and reporting its risks as they align with established thresholds for its tolerance of those risks. The Recovery Plan would discuss the management of credit/market risk and liquidity exposures together, because the tools

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25 The Plan would define an "Affiliated Family" of Members as a number of affiliated entities that are all Members of NSCC.

26 See Rule 46 (Restrictions on Access to Services), supra note 6.

27 Id.

that address these risks can be deployed either separately or in a coordinated approach in order to address both exposures. NSCC manages these risk exposures collectively to limit their overall impact on NSCC and its membership. As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.[28] NSCC manages its liquidity risks with an objective of maintaining sufficient resources to be able to fulfill obligations that have been guaranteed by NSCC in the event of a Member default that presents the largest aggregate liquidity exposure to NSCC over the settlement cycle.[29]

The Recovery Plan would outline the metrics and indicators that NSCC has developed to evaluate a stress situation against established risk tolerance thresholds. Each risk mitigation tool identified in the Recovery Plan would include a description of the escalation thresholds that allow for effective and timely reporting to the appropriate internal management staff and committees, or to the Board. The Recovery Plan would

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28 See Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters), supra note 6. Because NSCC does not maintain a guaranty fund separate and apart from the Clearing Fund it collects from Members, NSCC monitors its credit exposure to its Members by managing the market risks of each Member's unsettled portfolio through the collection of the Clearing Fund. The aggregate of all Members' Required Fund Deposits comprises the Clearing Fund that represents NSCC's prefunded resources to address uncovered loss exposures, as provided for in proposed Rule 4. Therefore, NSCC's market risk management strategy is designed to comply with Rule 17Ad-22(e)(4) under the Act, where these risks are referred to as "credit risks." See also 17 CFR 240.17Ad-22(e)(4).

29 NSCC's liquidity risk management strategy, including the manner in which NSCC utilizes its liquidity tools, is described in the Clearing Agency Liquidity Risk Management Framework. See Securities Exchange Act Release Nos. 80489 (April 19, 2017), 82 FR 19120 (April 25, 2017) (SR-DTC-2017-004, SR-NSCC-2017-005, SR-FICC-2017-008); 81194 (July 24, 2017), 82 FR 35241 (July 28, 2017) (SR-DTC-2017-004, SR-NSCC-2017-005, SR-FICC-2017-008).

make clear that these tools and escalation protocols would be calibrated across each phase of the Crisis Continuum. The Recovery Plan would also establish that NSCC would retain the flexibility to deploy such tools either separately or in a coordinated approach, and to use other alternatives to these actions and tools as necessitated by the circumstances of a particular Member default, in accordance with the Rules. Therefore, the Recovery Plan would both provide NSCC with a roadmap to follow within each phase of the Crisis Continuum, and would permit it to adjust its risk management measures to address the unique circumstances of each event.

The Recovery Plan would describe the conditions that mark each phase of the Crisis Continuum, and would identify actions that NSCC could take as it transitions through each phase in order to both prevent losses from materializing through active risk management, and to restore the financial health of NSCC during a period of stress.

The stable market phase of the Crisis Continuum would describe active risk management activities in the normal course of business. These activities would include (1) routine monitoring of margin adequacy through daily review of back testing and stress testing results that review the adequacy of NSCC's margin calculations, and escalation of those results to internal and Board committees;[30] and (2) routine monitoring of liquidity adequacy through review of daily liquidity studies that measure sufficiency of

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[30] NSCC's stress testing practices are described in the Clearing Agency Stress Testing Framework (Market Risk). See Securities Exchange Act Release Nos. 80485 (April 19, 2017), 82 FR 19131 (April 25, 2017) (SR-DTC-2017-005, SR-FICC-2017-009, SR-NSCC-2017-006); 81192 (July 24, 2017), 82 FR 35245 (July 28, 2017) (SR-DTC-2017-005, SR-FICC-2017-009, SR-NSCC-2017-006).

available liquidity resources to meet cash settlement obligations of the Member that would generate the largest aggregate payment obligation.[31]

The Recovery Plan would describe some of the indicators of the stress market phase of the Crisis Continuum, which would include, for example, volatility in market prices of certain assets where there is increased uncertainty among market participants about the fundamental value of those assets. This phase would involve general market stresses, when no Member default would be imminent. Within the description of this phase, the Recovery Plan would provide that NSCC may take targeted, routine risk management measures as necessary and as permitted by the Rules.

Within the Member default phase of the Crisis Continuum, the Recovery Plan would provide a roadmap for the existing procedures that NSCC would follow in the event of a Member default and any decision by NSCC to cease to act for that Member.[32] The Recovery Plan would provide that the objectives of NSCC's actions upon a Member or Affiliated Family default are to (1) minimize losses and market exposure of the affected Members and NSCC's non-Defaulting Members; and (2), to the extent practicable, minimize disturbances to the affected markets. The Recovery Plan would describe tools, actions, and related governance for both market risk monitoring and liquidity risk monitoring through this phase. For example, in connection with managing its market risk during this phase, NSCC would, pursuant to the Rules, (1) monitor and assess the adequacy of Clearing Fund resources; (2), when necessary and appropriate pursuant to the Rules, assess and collect additional margin requirements; and (3) follow

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[31] See supra note 29.

[32] See Rule 18 (Procedures for When the Corporation Declines or Ceases to Act) and Rule 46 (Restrictions on Access to Services), supra note 6.

its operational procedures to liquidate the Defaulting Member's portfolio. Management of liquidity risk through this phase would involve ongoing monitoring of the adequacy of NSCC's liquidity resources, and the Recovery Plan would identify certain actions NSCC may deploy as it deems necessary to mitigate a potential liquidity shortfall, which would include, for example, adjusting its strategy for closing out the Defaulting Member's portfolio or seeking additional liquidity resources. The Recovery Plan would state that, throughout this phase, relevant information would be escalated and reported to both internal management committees and the Board Risk Committee.

The Recovery Plan would also identify financial resources available to NSCC, pursuant to the Rules, to address losses arising out of a Member default. Specifically, Rule 4, as proposed to be amended by the Loss Allocation Filing, would provide that losses remaining after application of the Defaulting Member's resources be satisfied first by applying a "Corporate Contribution," and then, if necessary, by allocating remaining losses among the membership in accordance with such Rule 4.[33]

In order to provide for an effective and timely recovery, the Recovery Plan would describe the period of time that would occur near the end of the Member default phase, during which NSCC may experience stress events or observe early warning indicators that allow it to evaluate its options and prepare for the recovery phase (referred to in the

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[33] See supra note 11. The Loss Allocation Filing proposes to amend Rule 4 to define the amount NSCC would contribute to address a loss resulting from either a Member default or a non-default event as the "Corporate Contribution." This amount would be 50 percent (50%) of the "General Business Risk Capital Requirement," which is calculated pursuant to the Capital Policy and is an amount sufficient to cover potential general business losses so that NSCC can continue operations and services as a going concern if those losses materialize, in compliance with Rule 17Ad-22(e)(15) under the Act. See also supra note 9; 17 CFR 240.17Ad-22(e)(15).

Plan as the "Recovery Corridor"). The Recovery Plan would then describe the recovery phase of the Crisis Continuum, which would begin on the date that NSCC issues the first Loss Allocation Notice of the second loss allocation round with respect to a given "Event Period."[34] The recovery phase would describe actions that NSCC may take to avoid entering into a wind down of its business.

NSCC expects that significant deterioration of liquidity resources would cause it to enter the Recovery Corridor. As such, the Plan would describe the actions NSCC may take aimed at replenishing those resources. Recovery Corridor indicators may include, for example, a rapid and material change in market prices or substantial intraday activity volume by the Member that subsequently defaults, neither of which are mitigated by intraday margin calls, or subsequent defaults by other Members or Affiliated Families during a compressed time period. Throughout the Recovery Corridor, NSCC would monitor the adequacy of its resources and the expected timing of replenishment of those resources, and would do so through the monitoring of certain corridor indicator metrics.

The majority of the corridor indicators, as identified in the Recovery Plan, relate directly to conditions that may require NSCC to adjust its strategy for hedging and liquidating a Defaulting Member's portfolio, and any such changes would include an

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[34] The Loss Allocation Filing proposes to amend Rule 4 to introduce the concept of an "Event Period" as the ten (10) Business Days beginning on (i) with respect to a Member default, the day on which NSCC notifies Members that it has ceased to act for a Member under the Rules, or (ii) with respect to a non-default loss, the day that NSCC notifies Members of the determination by the Board that there is a non-default loss event, as described in greater detail in that filing. The proposed Rule 4 would define a "round" as a series of loss allocations relating to an Event Period, and would provide that the first Loss Allocation Notice in a first, second, or subsequent round shall expressly state that such notice reflects the beginning of a first, second, or subsequent round. The maximum allocable loss amount of a round is equal to the sum of the "Loss Allocation Caps" (as defined in the proposed Rule 4) of those Members included in the round. See supra note 11.

assessment of the status of the corridor indicators. Corridor indicators would include, for example, effectiveness and speed of NSCC's efforts to close out the portfolio of the Defaulting Member, and an impediment to the availability of its financial resources. For each corridor indicator, the Recovery Plan would identify (1) measures of the indicator, (2) evaluations of the status of the indicator, (3) metrics for determining the status of the deterioration or improvement of the indicator, and (4) "Corridor Actions," which are steps that may be taken to improve the status of the indicator,[35] as well as management escalations required to authorize those steps. Because NSCC has never experienced the default of multiple Members, it has not, historically, measured the deterioration or improvements metrics of the corridor indicators. As such, these metrics were chosen based on the business judgment of NSCC management.

The Recovery Plan would also describe the reporting and escalation of the status of the corridor indicators throughout the Recovery Corridor. Significant deterioration of a corridor indicator, as measured by the metrics set out in the Recovery Plan, would be escalated to the Board. NSCC management would review the corridor indicators and the related metrics at least annually, and would modify these metrics as necessary in light of observations from simulations of Member defaults and other analyses. Any proposed modifications would be reviewed by the Management Risk Committee and the Board Risk Committee. The Recovery Plan would estimate that NSCC may remain in the Recovery Corridor between one day and two weeks. This estimate is based on historical

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[35] The Corridor Actions that would be identified in the Plan are indicative, but not prescriptive; therefore, if NSCC needs to consider alternative actions due to the applicable facts and circumstances, the escalation of those alternative actions would follow the same escalation protocol identified in the Plan for the Corridor Indicator to which the action relates.

data observed in past Member defaults, the results of simulations of Member defaults, and periodic liquidity analyses conducted by NSCC. The actual length of a Recovery Corridor would vary based on actual market conditions observed at the time, and NSCC would expect the Recovery Corridor to be shorter in market conditions of increased stress.

The Recovery Plan would outline steps by which NSCC may allocate its losses, which would occur when and in the order provided in Rule 4, as amended.[36] The Recovery Plan would also identify tools that may be used to address foreseeable shortfalls of NSCC's liquidity resources following a Member default, and would provide that these tools may be used as appropriate during the Crisis Continuum to address liquidity shortfalls if they arise. The goal in managing NSCC's qualified liquidity resources is to maximize resource availability in an evolving stress situation, to maintain flexibility in the order and use of sources of liquidity, and to repay any third party lenders of liquidity in a timely manner. These liquidity tools include, for example, NSCC's committed 364-day credit facility,[37] and the issuance and private placement of additional short-term promissory notes ("commercial paper") and extendible notes, the cash proceeds of which provide NSCC with prefunded liquidity.[38] Additional voluntary or uncommitted tools to address potential liquidity shortfalls, for example uncommitted

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36 As these matters are described in greater detail in the Loss Allocation Filing and in the proposed amendments to Rule 4, described therein, reference is made to that filing and the details are not repeated here. See supra note 11.

37 See Securities Exchange Act Release No. 80605 (May 5, 2017), 82 FR 21850 (May 10, 2017) (SR-DTC-2017-802, SR-NSCC-2017-802).

38 See Securities Exchange Act Release No. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015) (SR-NSCC-2015-802).

bank loans, which may supplement NSCC's other liquid resources described herein, would also be identified in the Recovery Plan. The Recovery Plan would state that, due to the extreme nature of a stress event that would cause NSCC to consider the use of these liquidity tools, the availability and capacity of these liquidity tools, and the willingness of counterparties to lend, cannot be accurately predicted and are dependent on the circumstances of the applicable stress period, including market price volatility, actual or perceived disruptions in financial markets, the costs to NSCC of utilizing these tools, and any potential impact on NSCC's credit rating.

As stated above, the Recovery Plan would state that NSCC will have entered the recovery phase on the date that it issues the first Loss Allocation Notice of the second loss allocation round with respect to a given Event Period. The Recovery Plan would provide that, during the recovery phase, NSCC would continue and, as needed, enhance, the monitoring and remedial actions already described in connection with previous phases of the Crisis Continuum, and would remain in the recovery phase until its financial resources are expected to be or are fully replenished, or until the Wind-down Plan is triggered, as described below.

The Recovery Plan would describe governance for the actions and tools that may be employed within each phase of the Crisis Continuum, which would be dictated by the facts and circumstances applicable to the situation being addressed. Such facts and circumstances would be measured by the various indicators and metrics applicable to that phase of the Crisis Continuum, and would follow the relevant escalation protocols that would be described in the Recovery Plan. The Recovery Plan would also describe the governance procedures around a decision to cease to act for a Member, pursuant to the

Rules, and around the management and oversight of the subsequent liquidation of the Defaulting Member's portfolio. The Recovery Plan would state that, overall, NSCC would retain flexibility in accordance with the Rules, its governance structure, and its regulatory oversight, to address a particular situation in order to best protect NSCC and the Members, and to meet the primary objectives, throughout the Crisis Continuum, of minimizing losses and, where consistent and practicable, minimizing disturbance to affected markets.

*Non-Default Losses.* The Recovery Plan would outline how NSCC may address losses that result from events other than a Member default. While these matters are addressed in greater detail in other documents, this section of the Plan would provide a roadmap to those documents and an outline for NSCC's approach to monitoring and managing losses that could result from a non-default event. The Plan would first identify some of the risks NSCC faces that could lead to these losses, which include, for example, the business and profit/loss risks of unexpected declines in revenue or growth of expenses; the operational risks of disruptions to systems or processes that could lead to large losses, including those resulting from, for example, a cyber-attack; and custody or investment risks that could lead to financial losses. The Recovery Plan would describe NSCC's overall strategy for the management of these risks, which includes a "three lines of defense" approach to risk management that allows for comprehensive management of risk across the organization.[39] The Recovery Plan would also describe NSCC's approach

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[39] This "three lines of defense" approach to risk management includes (1) a first line of defense comprised of the various business lines and functional units that support the products and services offered by NSCC; (2) a second line of defense comprised of control functions that support NSCC, including the risk management, legal and compliance areas; and (3) a third line of defense, which is

to financial risk and capital management. The Plan would identify key aspects of this approach, including, for example, an annual budget process, business line performance reviews with management, and regular review of capital requirements against LNA. These risk management strategies are collectively intended to allow NSCC to effectively identify, monitor, and manage risks of non-default losses.

The Plan would identify the two categories of financial resources NSCC maintains to cover losses and expenses arising from non-default risks or events as (1) LNA, maintained, monitored, and managed pursuant to the Capital Policy, which include (a) amounts held in satisfaction of the General Business Risk Capital Requirement,[40] (b) the Corporate Contribution,[41] and (c) other amounts held in excess of NSCC's capital requirements pursuant to the Capital Policy; and (2) resources available pursuant to the loss allocation provisions of Rule 4.[42]

The Plan would address the process by which the CFO and the DTCC Treasury group would determine which available LNA resources are most appropriate to cover a

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performed by an internal audit group. The Clearing Agency Risk Management Framework includes a description of this "three lines of defense" approach to risk management, and addresses how NSCC comprehensively manages various risks, including operational, general business, investment, custody, and other risks that arise in or are borne by it. See Securities Exchange Act Release No. 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (SR-DTC-2017-013, SR-FICC-2017-016, SR-NSCC-2017-012). The Clearing Agency Operational Risk Management Framework describes the manner in which NSCC manages operational risks, as defined therein. See Securities Exchange Act Release No. 81745 (September 28, 2017), 82 FR 46332 (October 4, 2017) (SR-DTC-2017-014, SR-FICC-2017-017, SR-NSCC-2017-013).

[40] See supra note 33.

[41] See supra note 33.

[42] See supra note 11.

loss that is caused by a non-default event. This determination involves an evaluation of a number of factors, including the current and expected size of the loss, the expected time horizon over when the loss or additional expenses would materialize, the current and projected available LNA, and the likelihood LNA could be successfully replenished pursuant to the Replenishment Plan, if triggered.[43] Finally the Plan would discuss how NSCC would apply its resources to address losses resulting from a non-default event, including the order of resources it would apply if the loss or liability exceeds NSCC's excess LNA amounts, or is large relative thereto, and the Board has declared the event a "Declared Non-Default Loss Event" pursuant to Rule 4.[44]

The Plan would also describe proposed Rule 60 (Market Disruption and Force Majeure), which NSCC is proposing to adopt in the Rules. This Proposed Rule would provide transparency around how NSCC would address extraordinary events that may occur outside its control. Specifically, the Proposed Rule would define a "Market Disruption Event" and the governance around a determination that such an event has occurred. The Proposed Rule would also describe NSCC's authority to take actions during the pendency of a Market Disruption Event that it deems appropriate to address such an event and facilitate the continuation of its services, if practicable, as described in greater detail below.

The Plan would describe the interaction between the Proposed Rule and NSCC's existing processes and procedures addressing business continuity management and disaster recovery (generally, the "BCM/DR procedures"), making clear that the Proposed

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43 See supra note 9.

44 See supra note 11.

Rule is designed to support those BCM/DR procedures and to address circumstances that may be exogenous to NSCC and not necessarily addressed by the BCM/DR procedures. Finally, the Plan would describe that, because the operation of the Proposed Rule is specific to each applicable Market Disruption Event, the Proposed Rule does not define a time limit on its application. However, the Plan would note that actions authorized by the Proposed Rule would be limited to the pendency of the applicable Market Disruption Event, as made clear in the Proposed Rule. Overall, the Proposed Rule is designed to mitigate risks caused by Market Disruption Events and, thereby, minimize the risk of financial loss that may result from such events.

*Recovery Tool Characteristics.* The Recovery Plan would describe NSCC's evaluation of the tools identified within the Recovery Plan, and its rationale for concluding that such tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to Members and minimize negative impact on Members and the financial system, in compliance with guidance published by the Commission in connection with the adoption of Rule 17Ad-22(e)(3)(ii) under the Act.[45] NSCC's analysis and the conclusions set forth in this section of the Recovery Plan are described in greater detail in Item 3(b) of this filing, below.

NSCC Wind-down Plan

The Wind-down Plan would provide the framework and strategy for the orderly wind-down of NSCC if the use of the recovery tools described in the Recovery Plan do not successfully return NSCC to financial viability. While NSCC believes that, given the comprehensive nature of the recovery tools, such event is extremely unlikely, as

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[45] Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14).

described in greater detail below, NSCC is proposing a wind-down strategy that provides for (1) the transfer of NSCC's business, assets and membership to another legal entity, (2) such transfer being effected in connection with proceedings under Chapter 11 of the U.S. Federal Bankruptcy Code,[46] and (3) after effectuating this transfer, NSCC liquidating any remaining assets in an orderly manner in bankruptcy proceedings. NSCC believes that the proposed transfer approach to a wind-down would meet its objectives of (1) assuring that NSCC's critical services will be available to the market as long as there are Members in good standing, and (2) minimizing disruption to the operations of Members and financial markets generally that might be caused by NSCC's failure.

In describing the transfer approach to NSCC's Wind-down Plan, the Plan would identify the factors that NSCC considered in developing this approach, including the fact that NSCC does not own material assets that are unrelated to its clearance and settlement activities. As such, a business reorganization or "bail-in" of debt approach would be unlikely to mitigate significant losses. Additionally, NSCC's approach was developed in consideration of its critical and unique position in the U.S. markets, which precludes any approach that would cause NSCC's critical services to no longer be available.

First, the Wind-down Plan would describe the potential scenarios that could lead to the wind-down of NSCC, and the likelihood of such scenarios. The Wind-down Plan would identify the time period leading up to a decision to wind-down NSCC as the "Runway Period." This period would follow the implementation of any recovery tools, as it may take a period of time, depending on the severity of the market stress at that time, for these tools to be effective or for NSCC to realize a loss sufficient to cause it to be

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[46] 11 U.S.C. 1101 et seq.

unable to effectuate settlements and repay its obligations.[47] The Wind-down Plan would identify some of the indicators that it has entered this Runway Period, which would include, for example, successive Member defaults, significant Member retirements thereafter, and NSCC's inability to replenish its financial resources following the liquidation of the portfolio of the Defaulting Member(s).

The trigger for implementing the Wind-down Plan would be a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning NSCC to viability as a going concern. As described in the Plan, NSCC believes this is an appropriate trigger because it is both broad and flexible enough to cover a variety of scenarios, and would align incentives of NSCC and the Members to avoid actions that might undermine NSCC's recovery efforts. Additionally, this approach takes into account the characteristics of NSCC's recovery tools and enables the Board to consider (1) the presence of indicators of a successful or unsuccessful recovery, and (2) potential for knock-on effects of continued iterative application of NSCC's recovery tools.

The Wind-down Plan would describe the general objectives of the transfer strategy, and would address assumptions regarding the transfer of NSCC's critical services, business, assets and membership, and the assignment of NSCC's links with other FMIs, to another legal entity that is legally, financially, and operationally able to provide NSCC's critical services to entities that wish to continue their membership

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[47] The Wind-down Plan would state that, given NSCC's position as a user-governed financial market utility, it is possible that Members might voluntarily elect to provide additional support during the recovery phase leading up to a potential trigger of the Wind-down Plan, but would also make clear that NSCC cannot predict the willingness of Members to do so.

following the transfer ("Transferee"). The Wind-down Plan would provide that the Transferee would be either (1) a third party legal entity, which may be an existing or newly established legal entity or a bridge entity formed to operate the business on an interim basis to enable the business to be transferred subsequently ("Third Party Transferee"); or (2) an existing, debt-free failover legal entity established ex-ante by DTCC ("Failover Transferee") to be used as an alternative Transferee in the event that no viable or preferable Third Party Transferee timely commits to acquire NSCC's business. NSCC would seek to identify the proposed Transferee, and negotiate and enter into transfer arrangements during the Runway Period and prior to making any filings under Chapter 11 of the U.S. Federal Bankruptcy Code.[48] As stated above, the Wind-down Plan would anticipate that the transfer to the Transferee be effected in connection with proceedings under Chapter 11 of the U.S. Federal Bankruptcy Code, and pursuant to a bankruptcy court order under Section 363 of the Bankruptcy Code, such that the transfer would be free and clear of claims against, and interests in, NSCC, except to the extent expressly provided in the court's order.[49]

In order to effect a timely transfer of its services and minimize the market and operational disruption of such transfer, NSCC would expect to transfer all of its critical services and any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership. Following the transfer, the Wind-down Plan would anticipate that the Transferee and its continuing membership would determine whether to continue to provide any transferred

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48 See 11 U.S.C. 1101 et seq.

49 See id. at 363.

non-critical service on an ongoing basis, or terminate the non-critical service following some transition period. NSCC's Wind-down Plan would anticipate that the Transferee would enter into a transition services agreement with DTCC so that DTCC would continue to provide the shared services it currently provides to NSCC, including staffing, infrastructure and operational support. The Wind-down Plan would also anticipate the assignment of NSCC's link arrangements, including those with DTC, CDS and OCC, described above, to the Transferee.[50] The Wind-down Plan would provide that Members' open positions existing prior to the effective time of the transfer would be addressed by the provisions of the proposed Wind-down Rule and Corporation Default Rule, as defined and described below, and that the Transferee would not acquire any pending or open transactions with the transfer of the business. The Wind-down Plan would anticipate that the Transferee would accept transactions for processing with a trade date from and after the effective time of the transfer.

The Wind-down Plan would provide that, following the effectiveness of the transfer to the Transferee, the wind-down of NSCC would involve addressing any residual claims against NSCC through the bankruptcy process and liquidating the legal entity. As such, and as stated above, the Wind-down Plan does not contemplate NSCC continuing to provide services in any capacity following the transfer time, and any services not transferred would be terminated.

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[50] The proposed transfer arrangements outlined in the Wind-down Plan do not contemplate the transfer of any credit or funding agreements, which are generally not assignable by NSCC. However, to the extent the Transferee adopts rules substantially identical to those NSCC has in effect prior to the transfer, it would have the benefit of any rules-based liquidity funding. The Wind-down Plan contemplates that no Clearing Fund would be transferred to the Transferee, as it is not held in a bankruptcy remote manner and it is the primary prefunded liquidity resource to be accessed in the recovery phase.

The Wind-down Plan would also identify the key dependencies for the effectiveness of the transfer, which include regulatory approvals that would permit the Transferee to be legally qualified to provide the transferred services from and after the transfer, and approval by the applicable bankruptcy court of, among other things, the proposed sale, assignments, and transfers to the Transferee.

The Wind-down Plan would address governance matters related to the execution of the transfer of NSCC's business and its wind-down. The Wind-down Plan would address the duties of the Board to execute the wind-down of NSCC in conformity with (1) the Rules, (2) the Board's fiduciary duties, which mandate that it exercise reasonable business judgment in performing these duties, and (3) NSCC's regulatory obligations under the Act as a registered clearing agency. The Wind-down Plan would also identify certain factors the Board may consider in making these decisions, which would include, for example, whether NSCC could safely stabilize the business and protect its value without seeking bankruptcy protection, and NSCC's ability to continue to meet its regulatory requirements.

The Wind-down Plan would describe (1) actions NSCC or DTCC may take to prepare for wind-down in the period before NSCC experiences any financial distress, (2) actions NSCC would take both during the recovery phase and the Runway Period to prepare for the execution of the Wind-down Plan, and (3) actions NSCC would take upon commencement of bankruptcy proceedings to effectuate the Wind-down Plan.

Finally, the Wind-down Plan would include an analysis of the estimated time and costs to effectuate the plan, and would provide that this estimate be reviewed and approved by the Board annually. In order to estimate the length of time it might take to

achieve a recovery or orderly wind-down of NSCC's critical operations, as contemplated by the R&W Plan, the Wind-down Plan would include an analysis of the possible sequencing and length of time it might take to complete an orderly wind-down and transfer of critical operations, as described in earlier sections of the R&W Plan. The Wind-down Plan would also include in this analysis consideration of other factors, including the time it might take to complete any further attempts at recovery under the Recovery Plan. The Wind-down Plan would then multiply this estimated length of time by NSCC's average monthly operating expenses, including adjustments to account for changes to NSCC's profit and expense profile during these circumstances, over the previous twelve months to determine the amount of LNA that it should hold to achieve a recovery or orderly wind-down of NSCC's critical operations. The estimated wind-down costs would constitute the "Recovery/Wind-down Capital Requirement" under the Capital Policy.[51] Under that policy, the General Business Risk Capital Requirement is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement.[52]

The R&W Plan is designed as a roadmap, and the types of actions that may be taken both leading up to and in connection with implementation of the Wind-down Plan would be primarily addressed in other supporting documentation referred to therein.

The Wind-down Plan would address proposed Rule 41 (Corporation Default) and proposed Rule 42 (Wind-down of the Corporation), which would be adopted to facilitate the implementation of the Wind-down Plan, and are discussed below.

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[51] See supra note 9.

[52] See supra note 9.

***Proposed Rules***

In connection with the adoption of the R&W Plan, NSCC is proposing to adopt the Proposed Rules, each described below. The Proposed Rules would facilitate the execution of the R&W Plan and would provide Members and Limited Members with transparency as to critical aspects of the Plan, particularly as they relate to the rights and responsibilities of both NSCC and Members. The Proposed Rules also provide a legal basis to these aspects of the Plan.

Rule 41 (Corporation Default)

The proposed Rule 41 ("Corporation Default Rule") would provide a mechanism for the termination, valuation and netting of unsettled, guaranteed CNS transactions in the event NSCC is unable to perform its obligations or otherwise suffers a defined event of default, such as entering insolvency proceedings. The proposed Corporation Default Rule would provide Members with transparency and certainty regarding what would happen if NSCC were to fail (defined in the proposed Rule as a "Corporation Default").

The proposed rule would define the events that would constitute a Corporation Default, which would generally include (1) the failure of NSCC to make any undisputed payment or delivery to a Member if such failure is not remedied within seven days after notice of such failure is given to NSCC; (2) NSCC is dissolved; (3) NSCC institutes a proceeding seeking a judgment of insolvency or bankruptcy, or a proceeding is instituted against it seeking a judgment of bankruptcy or insolvency and such judgment is entered; or (4) NSCC seeks or becomes subject to the appointment of a receiver, trustee or similar

official pursuant to the federal securities laws or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act[53] for it or for all or substantially all of its assets.

Upon a Corporation Default, the proposed Corporation Default Rule would provide that all unsettled, guaranteed CNS transactions would be terminated and, no later than forty-five days from the date on which the event that constitutes a Corporation Default occurred (or "Default Date"), the Board would determine a single net amount owed by or to each Member with respect to such transactions pursuant to the valuation procedures set forth in the Proposed Rule. Essentially, for each affected position in a CNS Security, the "CNS Market Value" would be determined by using the Current Market Price for that security as determined in the CNS System as of the close of business on the next Business Day following the Default Date. NSCC would determine a "Net Contract Value" for each Member's net unsettled long or short position in a CNS Security by netting the Member's (i) contract price for such net position that, as of the Default Date, has not yet passed the Settlement Date, and (ii) the Current Market Price in the CNS System on the Default Date for its fail positions. To determine each Member's "CNS Close-out Value," (i) the Net Contract Value for each CUSIP would be subtracted from the CNS Market Value for such CUSIP, and (ii) the resulting difference for all CUSIPS in which the Member had a net long or short position would be summed, and would be netted and offset against any other amounts that may be due to or owing from the Member under the Rules. The proposed Corporation Default Rule would provide for notification to each Member of its CNS Close-out Value, and would also address

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[53] 12 U.S.C. 5381-5394.

interpretation of the Rules in relation to certain terms that are defined in the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA").[54]

NSCC believes this valuation approach, which is comparable to the approach adopted by other central counterparties, is appropriate for NSCC given the market in which NSCC operates and the volumes of transactions it processes in CNS, because it would provide for a common, clear and transparent valuation methodology and price per CUSIP applicable to all affected Members.

Rule 42 (Wind-down of the Corporation)

The proposed Rule 42 ("Wind-down Rule") would be adopted to facilitate the execution of the Wind-down Plan. The Wind-down Rule would include a proposed set of defined terms that would be applicable only to the provisions of this Proposed Rule. The Wind-down Rule would make clear that a wind-down of NSCC's business would occur (1) after a decision is made by the Board, and (2) in connection with the transfer of NSCC's services to a Transferee, as described therein. Generally, the proposed Wind-down Rule is designed to create clear mechanisms for the transfer of Eligible Members, Eligible Limited Members, and Settling Banks (as these terms would be defined in the Wind-down Rule), and NSCC's business, in order to provide for continued access to critical services and to minimize disruption to the markets in the event the Wind-down Plan is initiated.

*Wind-down Trigger*. First, the Proposed Rule would make clear that the Board is responsible for initiating the Wind-down Plan, and would identify the criteria the Board would consider when making this determination. As provided for in the Wind-down Plan

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[54] 12 U.S.C. 1811 et seq.

and in the proposed Wind-down Rule, the Board would initiate the Plan if, in the exercise of its business judgment and subject to its fiduciary duties, it has determined that the execution of the Recovery Plan has not or is not likely to restore NSCC to viability as a going concern, and the implementation of the Wind-down Plan, including the transfer of NSCC's business, is in the best interests of NSCC, Members and Limited Members, its shareholders and creditors, and the U.S. financial markets.

*Identification of Critical Services; Designation of Dates and Times for Specific Actions.* The Proposed Rule would provide that, upon making a determination to initiate the Wind-down Plan, the Board would identify the critical and non-critical services that would be transferred to the Transferee at the Transfer Time (as defined below and in the Proposed Rule), as well as any non-critical services that would not be transferred to the Transferee. The proposed Wind-down Rule would establish that any services transferred to the Transferee will only be provided by the Transferee as of the Transfer Time, and that any non-critical services that are not transferred to the Transferee would be terminated at the Transfer Time. The Proposed Rule would also provide that the Board would establish (1) an effective time for the transfer of NSCC's business to a Transferee ("Transfer Time"), (2) the last day that transactions may be submitted to NSCC for processing ("Last Transaction Acceptance Date"), and (3) the last day that transactions submitted to NSCC will be settled ("Last Settlement Date").

*Treatment of Pending Transactions.* The Wind-down Rule would also authorize the Board to provide for the settlement of pending transactions prior to the Transfer Time, so long as the Corporation Default Rule has not been triggered. For example, the Proposed Rule would provide the Board with the ability to, if it deems practicable, based

on NSCC's resources at that time, allow pending transactions to complete prior to the transfer of NSCC's business to a Transferee. The Board would also have the ability to allow Members to only submit trades that would effectively offset pending positions or provide that transactions will be processed in accordance with special or exception processing procedures. The Proposed Rule is designed to enable these actions in order to facilitate settlement of pending transactions and reduce claims against NSCC that would have to be satisfied after the transfer has been effected. If none of these actions are deemed practicable (or if the Corporation Default Rule has been triggered), then the provisions of the proposed Corporation Default Rule would apply to the treatment of open, pending transactions.

The Proposed Rule would make clear, however, that NSCC would not accept any transactions for processing after the Last Transaction Acceptance Date or which are designated to settle after the Last Settlement Date. Any transactions to be processed and/or settled after the Transfer Time would be required to be submitted to the Transferee, and would not be NSCC's responsibility.

*Notice Provisions.* The proposed Wind-down Rule would provide that, upon a decision to implement the Wind-down Plan, NSCC would provide Members and Limited Members and its regulators with a notice that includes material information relating to the Wind-down Plan and the anticipated transfer of NSCC's membership and business, including, for example, (1) a brief statement of the reasons for the decision to implement the Wind-down Plan; (2) identification of the Transferee and information regarding the transaction by which the transfer of NSCC's business would be effected; (3) the Transfer Time, Last Transaction Acceptance Date, and Last Settlement Date; and (4) identification

of Eligible Members and Eligible Limited Members, and the critical and non-critical services that would be transferred to the Transferee at the Transfer Time, as well as those Non-Eligible Members and Non-Eligible Limited Members (as defined in the Proposed Rule), and any non-critical services that would not be included in the transfer. NSCC would also make available the rules and procedures and membership agreements of the Transferee.

*Transfer of Membership.* The proposed Wind-down Rule would address the expected transfer of NSCC's membership to the Transferee, which NSCC would seek to effectuate by entering into an arrangement with a Failover Transferee, or by using commercially reasonable efforts to enter into such an arrangement with a Third Party Transferee. Therefore, the Wind-down Rule would provide Members, Limited Members and Settling Banks with notice that, in connection with the implementation of the Wind-down Plan and with no further action required by any party, (1) their membership with NSCC would transfer to the Transferee, (2) they would become party to a membership agreement with such Transferee, and (3) they would have all of the rights and be subject to all of the obligations applicable to their membership status under the rules of the Transferee. These provisions would not apply to any Member or Limited Member that is either in default of an obligation to NSCC or has provided notice of its election to withdraw from membership. Further, the proposed Wind-down Rule would make clear that it would not prohibit (1) Members and Limited Members that are not transferred by operation of the Wind-down Rule from applying for membership with the Transferee, or

(2) Members, Limited Members, and Settling Banks that would be transferred to the Transferee from withdrawing from membership with the Transferee.[55]

*Comparability Period.* The proposed automatic mechanism for the transfer of NSCC's membership is intended to provide NSCC's membership with continuous access to critical services in the event of NSCC's wind-down, and to facilitate the continued prompt and accurate clearance and settlement of securities transactions. Further to this goal, the proposed Wind-down Rule would provide that NSCC would enter into arrangements with a Failover Transferee, or would use commercially reasonable efforts to enter into arrangements with a Third Party Transferee, providing that, in either case, with respect to the critical services and any non-critical services that are transferred from NSCC to the Transferee, for at least a period of time to be agreed upon ("Comparability Period"), the business transferred from NSCC to the Transferee would be operated in a manner that is comparable to the manner in which the business was previously operated by NSCC. Specifically, the proposed Wind-down Rule would provide that: (1) the rules of the Transferee and terms of membership agreements would be comparable in substance and effect to the analogous Rules and membership agreements of NSCC; (2) the rights and obligations of any Members, Limited Members and Settling Banks that are transferred to the Transferee would be comparable in substance and effect to their rights and obligations as to NSCC; and (3) the Transferee would operate the transferred business and provide any services that are transferred in a comparable manner to which such services were provided by NSCC. The purpose of these provisions and the intended

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[55] The Members and Limited Members whose membership is transferred to the Transferee pursuant to the proposed Wind-down Rule would submit transactions to be processed and settled subject to the rules and procedures of the Transferee, including any applicable margin charges or other financial obligations.

effect of the proposed Wind-down Rule is to facilitate a smooth transition of NSCC's business to a Transferee and to provide that, for at least the Comparability Period, the Transferee (1) would operate the transferred business in a manner that is comparable in substance and effect to the manner in which the business was operated by NSCC, and (2) would not require sudden and disruptive changes in the systems, operations and business practices of the new members of the Transferee.

*Subordination of Claims Provisions and Miscellaneous Matters.* The proposed Wind-down Rule would also include a provision addressing the subordination of unsecured claims against NSCC of Members and Limited Members who fail to participate in NSCC's recovery efforts (*i.e.,* such firms are delinquent in their obligations to NSCC or elect to retire from NSCC in order to minimize their obligations with respect to the allocation of losses, pursuant to the Rules). This provision is designed to incentivize Members to participate in NSCC's recovery efforts.[56]

The proposed Wind-down Rule would address other ex-ante matters including provisions providing that Members, Limited Members and Settling Banks (1) will assist and cooperate with NSCC to effectuate the transfer of NSCC's business to a Transferee, (2) consent to the provisions of the rule, and (3) grant NSCC power of attorney to execute and deliver on their behalf documents and instruments that may be requested by the Transferee. Finally, the Proposed Rule would include a limitation of liability for any

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[56] Nothing in the proposed Wind-down Rule would seek to prevent a Member, Limited Member or Settling Bank that retired its membership at NSCC from applying for membership with the Transferee. Once its NSCC membership is terminated, however, such firm would not be able to benefit from the membership assignment that would be effected by this proposed Wind-down Rule, and it would have to apply for membership directly with the Transferee, subject to its membership application and review process.

actions taken or omitted to be taken by NSCC pursuant to the Proposed Rule. The purpose of the limitation of liability is to facilitate and protect NSCC's ability to act expeditiously in response to extraordinary events. As noted, such limitation of liability would be available only following triggering of the Wind-down Plan. In addition, and as a separate matter, the limitation of liability provides Members with transparency for the unlikely situation when those extraordinary events could occur, as well supporting the legal framework within which NSCC would take such actions. These provisions, collectively, are designed to enable NSCC to take such acts as the Board determines necessary to effectuate an orderly transfer and wind-down of its business should recovery efforts prove unsuccessful.

Rule 60 (Market Disruption and Force Majeure)

The proposed Rule 60 ("Force Majeure Rule") would address NSCC's authority to take certain actions upon the occurrence, and during the pendency, of a "Market Disruption Event," as defined therein. The Proposed Rule is designed to clarify NSCC's ability to take actions to address extraordinary events outside of the control of NSCC and of its membership, and to mitigate the effect of such events by facilitating the continuity of services (or, if deemed necessary, the temporary suspension of services). To that end, under the proposed Force Majeure Rule, NSCC would be entitled, during the pendency of a Market Disruption Event, to (1) suspend the provision of any or all services, and (2) take, or refrain from taking, or require Members and Limited Members to take, or refrain from taking, any actions it considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of NSCC's services as may be practicable.

The proposed Force Majeure Rule would identify the events or circumstances that would be considered a "Market Disruption Event," including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which NSCC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems. The proposed Force Majeure Rule would define the governance procedures for how NSCC would determine whether, and how, to implement the provisions of the rule. A determination that a Market Disruption Event has occurred would generally be made by the Board, but the Proposed Rule would provide for limited, interim delegation of authority to a specified officer or management committee if the Board would not be able to take timely action. In the event such delegated authority is exercised, the proposed Force Majeure Rule would require that the Board be convened as promptly as practicable, no later than five Business Days after such determination has been made, to ratify, modify, or rescind the action. The proposed Force Majeure Rule would also provide for prompt notification to the Commission, and advance consultation with Commission staff, when practicable, including notification when an event is no longer continuing and the relevant actions are terminated. The Proposed Rule would require Members and Limited Members to notify NSCC immediately upon becoming aware of a Market Disruption Event, and, likewise, would require NSCC to notify Members and Limited Members if it has triggered the Proposed Rule and of actions taken or intended to be taken thereunder.

Finally, the Proposed Rule would address other related matters, including a limitation of liability for any failure or delay in performance, in whole or in part, arising out of the Market Disruption Event. The purpose of the limitation of liability would be

similar to the purpose of the analogous provision in the proposed Wind-down Rule, which is to facilitate and protect NSCC's ability to act expeditiously in response to extraordinary events.

Proposed Change to the Rule Numbers

In order to align the order of the Proposed Rules with the order of comparable rules in the rulebooks of the other Clearing Agencies, NSCC is also proposing to re-number the current Rule 42 (Wind-down of a Member, Fund Member or Insurance Carrier/Retirement Services Member) to Rule 40, which is currently reserved for future use, as shown on Exhibit 5b, hereto.

*Expected Effect on and Management of Risk*

NSCC believes the proposal to adopt the R&W Plan and the Proposed Rules would enable it to better manage its risks. As described above, the Recovery Plan would identify the recovery tools and the risk management activities that NSCC may use to address risks of uncovered losses or shortfalls resulting from a Member default and losses arising from non-default events. By creating a framework for its management of risks across an evolving stress scenario and providing a roadmap for actions it may employ to monitor and, as needed, stabilize its financial condition, the Recovery Plan would strengthen NSCC's ability to manage risk. The Wind-down Plan would also enable NSCC to better manage its risks by establishing the strategy and framework for its orderly wind-down and the transfer of NSCC's business when the Wind-down Plan is triggered. By creating clear mechanisms for the transfer of NSCC's membership and business, the Wind-down Plan would facilitate continued access to NSCC's critical

services and minimize market impact of the transfer and enable NSCC to better manage risks related to its wind-down.

NSCC believes the Proposed Rules would enable it to better manage its risks by facilitating, and providing a legal basis for, the implementation of critical aspects of the R&W Plan. The Proposed Rules would provide Members and Limited Members with transparency around those provisions of the R&W Plan that relate to their and NSCC's rights, responsibilities and obligations. Therefore, NSCC believes the Proposed Rules would enable it to better manage its risks by providing this transparency and creating certainty, to the extent practicable, around the occurrence of a Market Disruption Event or a Corporation Default (as such terms are defined in the respective Proposed Rules), and around the implementation of the Wind-down Plan.

*Consistency with the Clearing Supervision Act*

The stated purpose of Title VIII of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[57] Section 805(a)(2) of the Clearing Supervision Act[58] also authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities, like NSCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision

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[57] 12 U.S.C. 5461(b).

[58] Id. at 5464(a)(2).

Act[59] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.

NSCC believes that the proposal is consistent with Section 805(b) of the Clearing Supervision Act because it is designed to address each of these objectives. The Recovery Plan and the proposed Force Majeure Rule would promote robust risk management and would reduce systemic risks by providing NSCC with a roadmap for actions it may employ to monitor and manage its risks, and, as needed, to stabilize its financial condition in the event those risks materialize. Further, the Recovery Plan would identify the triggers of recovery tools, but would not provide that those triggers necessitate the use of those tools. Instead, the Recovery Plan would provide that the triggers of these tools lead to escalation to an appropriate management body, which would have the authority and flexibility to respond appropriately to the situation. Essentially, the Recovery Plan and the proposed Force Majeure Rule are designed to minimize losses to both NSCC and Members by giving NSCC the ability to determine the most appropriate way to address each stress situation. This approach would allow for proper evaluation of the situation and the possible impacts of the use of the available recovery tools in order to minimize the negative effects of the stress situation, and would reduce systemic risks related to the implementation of the Recovery Plan and the underlying recovery tools.

The Wind-down Plan and the proposed Corporation Default Rule and Wind-down Rule, which would facilitate the implementation of the Wind-down Plan, would promote

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[59] Id. at 5464(b).

safety and soundness and would support the stability of the broader financial system, because they would establish a framework for the orderly wind-down of NSCC's business and would set forth clear mechanics for the transfer of its critical services and membership, as well as clear provisions concerning the treatment of open, guaranteed CNS transactions in the event of NSCC's default. By designing the Wind-down Plan and these Proposed Rules to enable the continuity of NSCC's critical services and membership, NSCC believes they would promote safety and soundness and would support stability in the broader financial system in the event the Wind-down Plan is implemented.

By assisting NSCC to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system, as described above, NSCC believes the proposal is consistent with Section 805(b) of the Clearing Supervision Act.[60]

NSCC also believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes that the R&W Plan, each of the Proposed Rules, and the proposed change to Rule numbers are consistent with Section 17A(b)(3)(F) of the Act,[61] the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad-22(e)(3)(ii)

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[60] Id.

[61] 15 U.S.C. 78q-1(b)(3)(F).

under the Act,[62] and the R&W Plan is consistent with Rule 17Ad-22(e)(15)(ii) under the Act,[63] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of NSCC be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.[64] The Recovery Plan and the proposed Force Majeure Rule would promote the prompt and accurate clearance and settlement of securities transactions by providing NSCC with a roadmap for actions it may employ to mitigate losses, and monitor and, as needed, stabilize, its financial condition, which would allow it to continue its critical clearance and settlement services in stress situations. Further, as described above, the Recovery Plan is designed to identify the actions and tools NSCC may use to address and minimize losses to both NSCC and Members. The Recovery Plan and the proposed Force Majeure Rule would provide NSCC's management and the Board with guidance in this regard by identifying the indicators and governance around the use and application of such tools to enable them to address stress situations in a manner most appropriate for the circumstances. Therefore, the Recovery Plan and the proposed Force Majeure Rule would also contribute to the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible by enabling actions that would address and minimize losses.

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62 17 CFR 240.17Ad-22(e)(3)(ii).

63 Id. at 240.17Ad-22(e)(15)(ii).

64 15 U.S.C. 78q-1(b)(3)(F).

The Wind-down Plan and the proposed Corporation Default Rule and Wind-down Rule, which would both facilitate the implementation of the Wind-down Plan, would also 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 NSCC or for which it is responsible. The Wind-down Plan and the proposed Corporation Default Rule and Wind-down Rule would collectively establish a framework for the transfer and orderly wind-down of NSCC's business. These proposals would establish clear mechanisms for the transfer of NSCC's critical services and membership, and for the treatment of open, guaranteed CNS transactions in the event of NSCC's default. By doing so, the Wind-down Plan and these Proposed Rules are designed to facilitate the continuity of NSCC's critical services and enable Members and Limited Members to maintain access to NSCC's services through the transfer of its membership in the event NSCC defaults or the Wind-down Plan is triggered by the Board. Therefore, by facilitating the continuity of NSCC's critical clearance and settlement services, NSCC believes the proposals would promote the prompt and accurate clearance and settlement of securities transactions. Further, by creating a framework for the transfer and orderly wind-down of NSCC's business, NSCC believes the proposals would enhance the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.

Finally, the proposed change to the Rule numbers would align the order of the Proposed Rules with the order of comparable rules in the rulebooks of the other Clearing Agencies. Therefore, NSCC believes the proposed change would create ease of reference, particularly for Members that are also participants of the other Clearing

Agencies, and, as such, would assist in promoting the prompt and accurate clearance and settlement of securities transactions.

Therefore, NSCC believes the R&W Plan, each of the Proposed Rules, and the proposed change to Rule numbers are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[65]

Rule 17Ad-22(e)(3)(ii) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[66] The R&W Plan and the Proposed Rules are designed to meet the requirements of Rule 17Ad-22(e)(3)(ii).[67]

The R&W Plan would be maintained by NSCC in compliance with Rule 17Ad-22(e)(3)(ii) in that it provides plans for the recovery and orderly wind-down of NSCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described above.[68] Specifically, the Recovery Plan would define the risk management activities, stress conditions and indicators, and tools that NSCC may use to address stress scenarios that could eventually prevent it from being able to provide its

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65 Id.

66 17 CFR 240.17Ad-22(e)(3)(ii).

67 Id.

68 Id.

critical services as a going concern. Through the framework of the Crisis Continuum, the Recovery Plan would address measures that NSCC may take to address risks of credit losses and liquidity shortfalls, and other losses that could arise from a Member default. The Recovery Plan would also address the management of general business risks and other non-default risks that could lead to losses.

The Wind-down Plan would be triggered by a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning NSCC to viability as a going concern. Once triggered, the Wind-down Plan would set forth clear mechanisms for the transfer of NSCC's membership and business, and would be designed to facilitate continued access to NSCC's critical services and to minimize market impact of the transfer. By establishing the framework and strategy for the execution of the transfer and wind-down of NSCC in order to facilitate continuous access to NSCC's critical services, the Wind-down Plan establishes a plan for the orderly wind-down of NSCC. Therefore, NSCC believes the R&W Plan would provide plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, and, as such, meets the requirements of Rule 17Ad-22(e)(3)(ii).[69]

As described in greater detail above, the Proposed Rules are designed to facilitate the execution of the R&W Plan, provide Members and Limited Members with transparency regarding the material provisions of the Plan, and provide NSCC with a

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[69] Id.

legal basis for implementation of those provisions. As such, NSCC also believes the Proposed Rules meet the requirements of Rule 17Ad-22(e)(3)(ii).[70]

NSCC has evaluated the recovery tools that would be identified in the Recovery Plan and has determined that these tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to NSCC's Members to manage the risks they present. The recovery tools, as outlined in the Recovery Plan and in the proposed Force Majeure Rule, provide NSCC with a comprehensive set of options to address its material risks and support the resiliency of its critical services under a range of stress scenarios. NSCC also believes the recovery tools are effective, as NSCC has both legal basis and operational capability to execute these tools in a timely and reliable manner. Many of the recovery tools are provided for in the Rules; Members are bound by the Rules through their membership agreements with NSCC, and the Rules are adopted pursuant to a framework established by Rule 19b-4 under the Act,[71] providing a legal basis for the recovery tools found therein. Other recovery tools have legal basis in contractual arrangements to which NSCC is a party, as described above. Further, as many of the tools are embedded in NSCC's ongoing risk management practices or are embedded into its predefined default-management procedures, NSCC is able to execute these tools, in most cases, when needed and without material operational or organizational delay.

The majority of the recovery tools are also transparent, as they are, or are proposed to be, included in the Rules, which are publicly available. NSCC believes the

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70 Id.

71 Id. at 240.19b-4.

recovery tools also provide appropriate incentives to the Members, as they are designed to control the amount of risk they present to NSCC's clearance and settlement system. Members' financial obligations to NSCC, particularly their Required Deposits to the Clearing Fund, are measured by the risk posed by the Members' activity in NSCC's systems, which incentivizes them to manage that risk which would correspond to lower financial obligations. Finally, NSCC's Recovery Plan provides for a continuous evaluation of the systemic consequences of executing its recovery tools, with the goal of minimizing their negative impact. The Recovery Plan would outline various indicators over a timeline of increasing stress, the Crisis Continuum, with escalation triggers to NSCC management or the Board, as appropriate. This approach would allow for timely evaluation of the situation and the possible impacts of the use of a recovery tool in order to minimize the negative effects of the stress scenario. Therefore, NSCC believes that the recovery tools that would be identified and described in its Recovery Plan, including the authority provided to it in the proposed Force Majeure Rule, would meet the criteria identified within guidance published by the Commission in connection with the adoption of Rule 17Ad-22(e)(3)(ii).[72]

Therefore, NSCC believes the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad-22(e)(3)(ii).[73]

Rule 17Ad-22(e)(15)(ii) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient LNA to cover potential

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[72] Supra note 45.

[73] 17 CFR 240.17Ad-22(e)(3)(ii).

general business losses so that NSCC can continue operations and services as a going concern if those losses materialize, including by holding LNA equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency.[74] While the Capital Policy addresses how NSCC holds LNA in compliance with these requirements, the Wind-down Plan would include an analysis that would estimate the amount of time and the costs to achieve a recovery or orderly wind-down of NSCC's critical operations and services, and would provide that the Board review and approve this analysis and estimation annually. The Wind-down Plan would also provide that the estimate would be the "Recovery/Wind-down Capital Requirement" under the Capital Policy. Under that policy, the General Business Risk Capital Requirement, which is the sufficient amount of LNA that NSCC should hold to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize, is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement. Therefore, NSCC believes the R&W Plan, as it interrelates with the Capital Policy, is consistent with Rule 17Ad-22(e)(15)(ii).[75]

III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested

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[74] Id. at 240.17Ad-22(e)(15)(ii).

[75] Id.

by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notice is consistent with the Clearing Supervision Act. 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-2017-805 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NSCC-2017-805. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice 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-2017-805 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

Secretary

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**PURSUANT TO THE FREEDOM OF INFORMATION ACT**

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**SR-NSCC-2017-805 Amendment No. 1**
**EXHIBIT 5b**

**NATIONAL SECURITIES CLEARING CORPORATION**

**RULES & PROCEDURES**

TEXT OF PROPOSED RULE CHANGE

**Bold and underlined text** indicates proposed added language

~~**Bold and strikethrough text**~~ indicates proposed deleted language

RULE 40. (~~RULE NUMBER RESERVED FOR FUTURE USE~~**WIND-DOWN OF A MEMBER, FUND MEMBER OR INSURANCE CARRIER/RETIREMENT SERVICES MEMBER**)

**When a Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member notifies the Corporation that it intends to wind down its activities, the Corporation may, in its sole discretion, in order to protect itself and its participants, determine that such Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member is a "Wind-Down Member". In that event and, without limiting any other rights of the Corporation under these Rules and Procedures, the Corporation may impose conditions on, or take actions with respect to, the Wind-Down Member as provided below.**

**As soon as practicable after the Corporation determines that a Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member is a Wind-Down Member, the Corporation shall notify the Wind-Down Member, all other participants and the SEC of such determination.**

**The Corporation may, in its discretion, impose conditions on, or take actions with respect to, the Wind-Down Member as appropriate to mitigate risk the Corporation perceives may be presented by the Wind-Down Member, including but not limited to, the following:**

**(i) Permitting the Wind-Down Member to submit to the Corporation only transactions that serve to support the wind-down;**

**(ii) Permitting the Wind-Down Member to continue use of one or more of the Corporation's services, notwithstanding that it may not meet some or all of the financial or operational requirements for continuance as a Member or Limited Member, as applicable;**

**(iii) Restricting or modifying the Wind-Down Member's use of any or all of the Corporation's services (whether generally, or with respect to certain transactions);**

**(iv) Requiring additional assurances of the financial responsibility or operational capability of the Wind-Down Member through, for example, submission of a guaranty of the Wind-Down Member's obligations to the Corporation by an entity acceptable to the Corporation and/or additional reporting by the Wind-Down Member;**

**(v) Agreeing to complete one or more trades to which the Wind-Down Member is a party prior to the time the Corporation's guaranty otherwise would become effective pursuant to these Rules and Procedures;**

**(vi) Requiring the Wind-Down Member to post increased Clearing Fund deposits and/or to post its Required Deposit all in cash or in proportions of cash, qualifying bonds and eligible Letters of Credit different from those permitted under Rule 4;**

**(vii) Prohibiting the Wind-Down Member from withdrawing Clearing Fund on deposit in excess of its Required Deposit;**

**(viii) Calculating the Required Deposit of the Wind-Down Member in a manner different from the applicable formulae provided in the Procedures, in order to more appropriately reflect the risk presented by the Wind-Down Member to the Corporation, such as for example, not applying certain components of such calculation; or**

**(ix) Liquidating by buying-in or selling-out, as applicable, any open positions of the Wind-Down Member, for the benefit of such Wind-Down Member with any profit or loss resulting therefrom being debited or credited, as applicable, to the settlement account of the Wind-Down Member.**

**If the Corporation takes, or mandates, any action pursuant to this Rule, the Corporation shall, as soon as practicable thereafter, notify the SEC and such other participants as it deems proper due to the nature of such action.**

**Notwithstanding the foregoing, the Corporation shall not be restricted from exercising any of its rights in these Rules or in any agreements between itself and the Wind-Down Member at any time, including the Corporation's right at any time to cease to act for the Wind-Down Member pursuant to Rule 46.**

RULE 41. (~~RULE NUMBER RESERVED FOR FUTURE USE~~**CORPORATION DEFAULT**)

**SEC. 1. If a "Corporation Default" occurs pursuant to Section 2 below, all CNS Transactions which have been guaranteed but have not yet settled, and all obligations and related rights arising thereunder which have been assigned to and assumed by the Corporation pursuant to these Rules, shall be immediately terminated, and the Board shall determine a single net amount owed by or to each Member with respect to such CNS Transactions by applying the valuation and netting procedures set forth in Section 3 of this Rule 41 below. Notwithstanding the foregoing, (a) the occurrence of a Corporation Default shall not affect the rights and obligations of Members party to Balance Orders that they would otherwise have on account of such transactions under these Rules and applicable law; and (b) the treatment of any pending non-guaranteed transactions shall be determined in accordance with the provisions of Rule 42 (Wind-down of the Corporation).**

**SEC. 2. Certain Definitions. For purposes of this Rule 41:**

**(a) Notwithstanding anything to the contrary in the Rules, the following events shall constitute a "Corporation Default":**

**(i) Failure by the Corporation to make, when due, any undisputed payment or delivery to a Member required to be made by it under and in accordance with these Rules and such failure is not remedied within 7 days after notice of such failure is given to the Corporation by the affected Member; *provided* that this clause (i) shall not apply to (A) obligations of the Corporation to Wind-Down Members, or Members for whom the Corporation has otherwise ceased to act pursuant to Rule 46 (including an insolvent Member), (B) any payment or delivery which the Corporation satisfies by alternate means as provided in these Rules, or (C) any obligation of the Corporation that is not a payment or delivery obligation of the Corporation to a Member under these Rules; or**

**(ii) The Corporation (A) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (B) institutes a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or presents a petition for its winding-up or liquidation or makes a general assignment for the benefit of creditors; (C) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is**

**presented for its winding-up or liquidation and, in each case, such proceeding or petition results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or (D) seeks or becomes subject to the appointment of a receiver, trustee, or other similar official pursuant to the federal securities laws or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act for it or for all or substantially all its assets.**

**(b) the "CNS Position" of a Member in any CNS Security shall be equal to the net of the Member's unsettled Long Positions and Short Positions in such security as of the close of Business on the Default Date (and, for the avoidance of doubt, this shall include both CNS positions that have not yet passed Settlement Date and fail positions);**

**(c) "Default Date" means the date on which the event that constitutes the Corporation Default occurs; and**

**(d) "Net Contract Value" means, for each Member's CNS Position in a given CNS Security, the net of the Member's (x) contract price for such net position that, as of the Default Date, has not yet passed Settlement Date, and (y) the Current Market Price in the CNS System on the Default Date for its fail positions, in each case as shown on the applicable reports issued by the Corporation to the Member in accordance with the Procedures applicable to the CNS System.**

**SEC. 3 Valuation and Calculation of Claims.**

**(a) As promptly as practicable, but in any event within 45 days after the Default Date, the Corporation shall fix a dollar amount to be paid or received by each Member to or from the Corporation in connection with the termination of a CNS Transaction, after taking into account all of the applicable following netting and offsetting:**

**(i) The Corporation shall value all CNS Positions by using the Current Market Price, as determined for the CNS System, as of the close of business on the next Business Day immediately following the Default Date, so that each Member shall have the same per share price for a given security in which it had an open CNS Position (the resulting value referred to as the "CNS Market Value");**

**(ii) For each Member, the Net Contract Value of its terminated CNS Positions shall be determined as provided in**

**subsection 2(d) above; which amount shall be positive or negative, as applicable;**

**(iii) To determine each Member's CNS Close-out Value, (x) the Net Contract Value for each CUSIP shall be subtracted from the CNS Market Value for such CUSIP, and (y) the resulting difference for all CUSIPS in which the Member had a CNS Position shall be summed, and the resulting amount shall be positive or negative, as applicable.**

**(iv) The CNS Close-out Value shall be further netted and offset against any other amounts, or the value of any property, as valued by the Corporation, that may be due to, or owing from, the Member under these Rules, taking into account the application of any provisions of Rule 4 relating to loss allocation, including in the event that the Member is in default of its obligations to deliver funds to the Corporation, or the Corporation has prior to the Default Date Ceased to Act for the Member.**

**(b) The Board shall notify each Member of the CNS Close-out Value, taking into account the netting and offsetting provided for in subsections 3(a)(i) to (iv) above. Members who have been notified that they owe an amount to the Corporation shall pay that amount on or prior to the date specified by the Board, subject to any applicable setoff rights. Members who have a net claim against the Corporation shall be entitled to payment thereof along with other Members' and any other creditors' claims pursuant to the underlying contracts with respect thereto, these Rules and applicable law. For the avoidance of doubt, nothing herein shall limit the rights of the Corporation upon a Member default (including following a Corporation Default), including any rights under any Clearing Agency Cross-Guaranty Agreement or otherwise.**

**SEC. 4. Interpretation in Relation to the Federal Deposit Insurance Corporation Act of 1991:**

**The Corporation and the Members intend that these Rules be interpreted in relation to certain terms (identified below) that are defined in the Federal Deposit Insurance Corporation Act of 1991 ("FDICIA"), as amended, as follows:**

**The Corporation is a "clearing organization";**

**Any obligation of a Member or the Corporation to make any payments to the other is a "covered clearing obligation" and a "covered contractual payment obligation";**

**An entitlement of a Member or the Corporation to receive a payment from the other is a "covered contractual payment entitlement";**

**The Corporation and each Member is a "member" of the "clearing organization";**

**The amount by which the covered contractual payment entitlements of a Member or the Corporation exceed the covered contractual payment obligations of such Member or the Corporation after netting pursuant to Rule 18 or this Rule 41 is its "net entitlement";**

**The amount by which the covered contractual payment obligations of a Member or the Corporation exceed the covered contractual payment entitlements of such Member or the Corporation after netting under a netting pursuant to Rule 18 or this Rule 41 is its "net obligation"; and**

**These Rules, together with all other agreements between the Corporation and a Clearing Member, are a "netting contract", the margin, Clearing Fund and other provisions of these Rules granting an interest in any funds or property of a member to the Corporation constitute a "security agreement or arrangement or other credit enhancement" relating to such netting contract and the close-out process in Rule 18 or this Rule 41 constitutes the "terminat[ion], liquidat[ion], accelerat[ion], and nett[ing]" of obligations.**

RULE 42. (~~WIND DOWN OF A MEMBER, FUND MEMBER OR INSURANCE CARRIER/RETIREMENT SERVICES MEMBER~~**WIND-DOWN OF THE CORPORATION**)

***Section 1.*** **Defined Terms**

**(a)** **For purposes of this Rule 42:**

**"Bridge Entity" has the meaning given to such term in the definition of "Transferee" in this Section 1(a).**

**"Business" means the Critical Services and any Non-Critical Services of the Corporation included in a Transfer.**

**"Comparability Period" means a period of time following the Transfer, to be agreed between the Corporation and a Transferee, during which the Business transferred from the Corporation to the Transferee shall be operated by the Transferee in a manner comparable to the manner in which the Business was previously operated by the Corporation, as more specifically set forth in Section 9 of this Rule 42.**

**"Corporation Default Rule" means Rule 41 of the Corporation.**

**"Critical Services" means the services of the Corporation described in the Rules and Procedures of the Corporation that have been identified as critical services in the Recovery and Wind-down Plan.**

**"Delinquent Limited Member" means a Limited Member of the Corporation that is delinquent in the performance of any of its obligations to the Corporation (as determined by the Corporation).**

**"Delinquent Member" means a Member of the Corporation that is delinquent in the performance of any of its obligations to the Corporation (as determined by the Corporation).**

**"DTCC" means The Depository Trust & Clearing Corporation.**

**"Eligible Limited Member" means a Limited Member of the Corporation other than a Non-Eligible Limited Member.**

**"Eligible Member" means a Member of the Corporation other than a Non-Eligible Member.**

**"Failover Entity" has the meaning given to such term in the definition of "Transferee" in this Section 1(a).**

**“Guaranteed Transaction” means a transaction in CNS Securities or Balance Order Securities that is processed through the facilities of the Corporation and guaranteed by the Corporation.**

**“Last Settlement Date” has the meaning given to such term in Section 2(c)(3) of this Rule 42.**

**“Last Transaction Acceptance Date” has the meaning given to such term in Section 2(c)(2) of this Rule 42.**

**“Limited Member” means a Limited Member of the Corporation (other than a Settling Bank Only Member or an AIP Settling Bank Only Member) or a Limited Member of the Transferee (other than a Settling Bank Only Member or an AIP Settling Bank Only Member), as the context requires.**

**“Limited Member Agreement” means the form of agreement between a Limited Member and the Corporation or between a Limited Member and the Transferee, as the context requires, providing, *inter alia*, for the Limited Member to be bound by the Rules and Procedures of the Corporation or the Rules and Procedures of the Transferee, as applicable to such Limited Member.**

**“Member” means a Member of the Corporation (other than a Settling Bank or AIP Settling Bank) or a Member of the Transferee (other than a Settling Bank or AIP Settling Bank), as the context requires.**

**“Member Agreement” means the form of agreement between a Member and the Corporation or between a Member and the Transferee, as the context requires, providing, *inter alia*, for the Member to be bound by the Rules and Procedures of the Corporation or the Rules and Procedures of the Transferee, as applicable to such Member.**

**“Non-Critical Services” means the services of the Corporation described in the Rules and Procedures of the Corporation other than the Critical Services.**

**“Non-Eligible Limited Member” means a Limited Member of the Corporation that is a Delinquent Limited Member or Withdrawing Limited Member.**

**“Non-Eligible Member” means a Member of the Corporation that is a Delinquent Member or Withdrawing Member.**

**“Non-Guaranteed Transaction” means any transaction that is processed through the facilities of the Corporation other than a Guaranteed Transaction.**

**“Recovery and Wind-down Plan” means the plan for the recovery and orderly wind-down of the Corporation necessitated by credit losses, liquidity shortfalls, losses from general business risk or any other losses, adopted by the Corporation pursuant to Rule 17Ad-22(e)(3)(ii) under the Securities Exchange Act of 1934, as amended.**

**“Recovery Plan” means the portion of the Recovery and Wind-down Plan addressing recovery.**

**“Risk Reducing Transaction” means a Guaranteed Transaction that offsets one or more other Guaranteed Transactions, and thereby reduces the potential exposure of the Corporation with respect to such Guaranteed Transactions.**

**“Rules and Procedures” means the Rules and Procedures of the Corporation or the Rules and Procedures of the Transferee, as the context requires.**

**“Settling Bank” means a Settling Bank, Settling Bank Only Member, AIP Settling Bank or AIP Settling Bank Only Member for Members and Limited Members of the Corporation or a Settling Bank, Settling Bank Only Member, AIP Settling Bank or AIP Settling Bank Only Member for Members and Limited Members of the Transferee, as the context requires.**

**“Settling Bank Agreement” means the form of agreement between a Settling Bank and the Corporation or between a Settling Bank and the Transferee, as the context requires, providing, *inter alia*, for the Settling Bank to be bound by the Rules and Procedures of the Corporation or the Rules and Procedures of the Transferee, as applicable to such Settling Bank.**

**“Third Party Entity” has the meaning given to such term in the definition of “Transferee” in this Section 1(a).**

**“Transfer” means a transfer of the Business of the Corporation pursuant to the Wind-down Plan.**

**“Transferee” means an entity to which the Business of the Corporation is transferred pursuant to the Wind-down Plan, and may include (i) a failover entity established by DTCC (a “Failover Entity”), (ii) a then-existing or newly-established third party entity (a “Third Party Entity”) or (iii) a bridge entity formed to operate the Business on an interim basis (a “Bridge Entity”). The Transferee shall be an entity that is legally, financially and operationally qualified to continue to operate the Business that is to be transferred from the Corporation to the Transferee.**

**"Transferee Documents" means the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling Bank Agreement of the Transferee.**

**"Transfer Notice" has the meaning given to such term in Section 3 of this Rule 42.**

**"Transfer Time" has the meaning given to such term in Section 2(c)(1) of this Rule 42.**

**"Wind-down Plan" means the portion of the Recovery and Wind-down Plan addressing wind-down.**

**"Withdrawing Limited Member" means a Limited Member of the Corporation that has given notice to the Corporation of its election to withdraw as a Limited Member but that, at the Transfer Time, has not yet ceased to be a Limited Member (as determined by the Corporation).**

**"Withdrawing Member" means a Member of the Corporation that has given notice to the Corporation of its election to withdraw as a Member but that, at the Transfer Time, has not yet ceased to be a Member (as determined by the Corporation).**

**(b)** **Capitalized terms that are used in this Rule 42 but not defined in Section 1(a) above shall have the meanings given to such terms in other Rules and Procedures of the Corporation.**

***Section 2.*** **Initiation of Wind-down Plan**

**(a)** **The Board of Directors may authorize the initiation of the Wind-down Plan and a transfer of the Business from the Corporation to a Transferee if the Board of Directors determines, in the exercise of its business judgment and subject to its fiduciary duties:**

**(1)** **that the application of some or all of the recovery tools set forth in the Recovery Plan, necessitated by credit losses, liquidity shortfalls, losses from general business risk or any other losses:**

**A.** **has not restored the Corporation to viability as a going concern, able to continue to provide its Critical Services to Members and Limited Members of the Corporation in a safe and efficient manner; or**

**B.** **will not likely restore the Corporation to viability as a going concern, able to continue to provide its Critical**

**Services to Members and Limited Members of the Corporation in a safe and efficient manner; and**

**(2) that the implementation of the Wind-down Plan and a Transfer of the Business from the Corporation to a Transferee is in the best interests of the Corporation, its shareholders and creditors, Members and Limited Members and the US financial markets.**

**(b) The Board of Directors shall identify:**

**(1) the Critical Services and any Non-Critical Services that shall be transferred from the Corporation to the Transferee at the Transfer Time; and**

**(2) any Non-Critical Services that shall not be transferred from the Corporation to the Transferee.**

**The Critical Services and any Non-Critical Services that are transferred from the Corporation to the Transferee at the Transfer Time shall be provided by the Transferee following the Transfer Time. Any Non-Critical Services that are not transferred from the Corporation to the Transferee shall be terminated at the Transfer Time.**

**(c) The Board of Directors shall establish:**

**(1) the date and time (the "Transfer Time") of the Transfer;**

**(2) the last day that transactions may be submitted to the Corporation for processing (the "Last Transaction Acceptance Date"); and**

**(3) the last day that transactions submitted to the Corporation for processing will be settled (the "Last Settlement Date").**

**The Corporation shall not accept any transactions (i) for processing after the Last Transaction Acceptance Date or (ii) which have a designated Settlement Date that occurs after the Last Settlement Date. All transactions to be processed and/or settled after the Transfer Time shall be submitted to the Transferee in accordance with the Rules and Procedures of the Transferee, and the Corporation shall have no responsibility for such transactions.**

**(d) To the extent that the Board of Directors deems it to be practicable based on the available resources of the Corporation, the Board of Directors may provide for pending transactions to be run off and settled prior to the Transfer Time, with the objective of facilitating the**

**settlement of transactions in the ordinary course. In furtherance of this objective, so long as a Corporation Default has not occurred, the Board of Directors may provide for how such transactions accepted by the Corporation on or prior to the Last Transaction Acceptance Date shall be processed and settled, including:**

**(1) whether such transactions must be Risk Reducing Transactions; and**

**(2) whether such transactions will be processed (i) in the ordinary course or (ii) in accordance with any special or exception processing procedures that will apply through the close of business on the Last Settlement Date.**

***Section 3.*** **Notice of Transfer of the Business**

**If the Board of Directors determines to implement a Transfer of the Business from the Corporation to a Transferee in accordance with this Rule 42 and the terms and conditions of the Wind-down Plan, the Corporation shall, in such manner as may be provided by the Rules and Procedures of the Corporation and subject to any required regulatory or judicial approval or consent:**

**(a) provide Members, Limited Members and Settling Banks with a notice (a "Transfer Notice") setting forth:**

**(1) the decision taken by the Board of Directors to Transfer the Business from the Corporation to the Transferee and a brief statement of the reasons therefor;**

**(2) the name of the Transferee and basic information about the Transferee;**

**(3) a description of the material financial and operational terms of the Transfer;**

**(4) the (i) Transfer Time, (ii) Last Transaction Acceptance Date and (iii) Last Settlement Date;**

**(5) a summary of the matters described in Sections 4 through 8 of this Rule 42;**

**(6) a list setting forth (i) which Members and Limited Members of the Corporation are Eligible Members and Limited Members and (ii) which Members and Limited Members of the Corporation are Non-Eligible Members and Limited Members; and**

**(7)** **a list setting forth (i) the Critical Services and any Non-Critical Services that will be transferred from the Corporation to the Transferee at the Transfer Time and (ii) any Non-Critical Services that will not be transferred from the Corporation to the Transferee; and**

**(b)** **make available to Members, Limited Members and Settling Banks a copy of the Transferee Documents.**

**No delay or failure on the part of the Corporation to provide a Transfer Notice or make available a copy of the Transferee Documents to any Member, Limited Member or Settling Bank shall alter the timing or effectiveness of the Transfer. The Corporation shall also furnish the Transfer Notice and a copy of the Transferee Documents to its regulators.**

***Section 4.*** **Transfer of Members, Limited Members and Settling Banks**

**Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, at the Transfer Time, by operation of this Rule 42 and with no further action required by any party:**

**(a)** **each Eligible Member of the Corporation shall become (i) a Member of the Transferee and (ii) a party to a Member Agreement with the Transferee;**

**(b)** **each Eligible Limited Member of the Corporation shall become (i) a Limited Member of the Transferee and (ii) a party to a Limited Member Agreement with the Transferee; and**

**(c)** **each Settling Bank for Members and Limited Members of the Corporation shall become (i) a Settling Bank for Members and Limited Members of the Transferee and (ii) a party to a Settling Bank Agreement with the Transferee.**

***Section 5.*** **Status of Members, Limited Members and Settling Banks**

**Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, from and after the Transfer Time:**

**(a)** **An Eligible Member of the Corporation that has become a Member of the Transferee shall have all of the rights and be subject to all of the obligations of a Member set forth in the Rules and Procedures of the Transferee, including the legal, financial, operational and collateral requirements of the Transferee applicable to such Member.**

**(b)** **An Eligible Limited Member of the Corporation that has become a Limited Member of the Transferee shall have all of the rights and be subject to all of the obligations of a Limited Member set forth in the Rules and Procedures of the Transferee, including the legal, financial and operational requirements of the Transferee applicable to such Limited Member.**

**(c)** **A Settling Bank for Members and Limited Members of the Corporation that has become a Settling Bank for Members and Limited Members of the Transferee shall have all of the rights and be subject to all of the obligations of a Settling Bank set forth in the Rules and Procedures of the Transferee, including the operational requirements of the Transferee applicable to such Settling Bank.**

***Section 6.*** **Right of Non-Eligible Members and Limited Members to Apply to the Transferee**

**Nothing contained in this Rule 42 shall:**

**(a)** **preclude a Non-Eligible Member of the Corporation from applying after the Transfer Time to become a Member of the Transferee in accordance with such eligibility requirements and procedures as may be prescribed by the Transferee, but such Non-Eligible Member shall not have the benefit of the automatic admission arrangements provided in Section 4(a) of this Rule 42; or**

**(b)** **preclude a Non-Eligible Limited Member of the Corporation from applying after the Transfer Time to become a Limited Member of the Transferee in accordance with such eligibility requirements and procedures as may be prescribed by the Transferee, but such Non-Eligible Limited Member shall not have the benefit of the automatic admission arrangements set forth in Section 4(b) of this Rule 42.**

***Section 7.*** **Right to Withdraw from the Transferee**

**Nothing contained in this Rule 42 shall:**

**(a)** **preclude an Eligible Member of the Corporation that has become a Member of the Transferee pursuant to Section 4(a) of this Rule 42 from electing to withdraw as a Member from the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Transferee;**

**(b)** **preclude an Eligible Limited Member of the Corporation that has become a Limited Member of the Transferee pursuant to Section 4(b) of this Rule 42 from electing to withdraw as a Limited Member from the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Transferee; or**

**(c)** **preclude a Settling Bank for Members and Limited Members of the Corporation that has become a Settling Bank for Members and Limited Members of the Transferee pursuant to Section 4(c) of this Rule 42 from electing to withdraw as a Settling Bank from the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Transferee.**

***Section 8.*** **Disposition of Pending Transactions**

**At the Transfer Time:**

**(a)** **any pending transactions that are Guaranteed Transactions shall be treated as provided in the Corporation Default Rule; and**

**(b)** **any pending transactions that are Non-Guaranteed Transactions shall be settled by the parties outside the facilities of the Corporation, including, if agreed by the Transferee, through the facilities of the Transferee.**

***Section 9.*** **Certain Ex Ante Matters**

**Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, with respect to the Critical Services and any Non-Critical Services that are transferred from the Corporation to the Transferee, for at least the duration of the Comparability Period, in order to facilitate a smooth Transfer of the Business from the Corporation to the Transferee:**

**(a)** **the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling Bank Agreement of the Transferee shall be comparable in substance and effect to the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling Bank Agreement of the Corporation;**

**(b)** **the rights and obligations of Members, Limited Members and Settling Banks of the Transferee under the Rules and Procedures of the Transferee shall be comparable in substance and effect to the rights and obligations of Members, Limited Members and Settling Banks of the Corporation under the Rules and Procedures of the Corporation; and**

**(c)** **the Critical Services and any Non-Critical Services provided by the Transferee shall be provided in a manner that is comparable in substance and effect to the manner in which such Critical Services and Non-Critical Services were provided by the Corporation.**

***Section 10.*** **Subordination of Claims**

**In the event of any insolvency of the Corporation following the commencement of any Event Period (as defined in Rule 4), the unsecured claims (if any) of Members and Limited Members of the Corporation that failed to pay or perform any obligation to the Corporation or elected to withdraw as Members or Limited Members from and after such time shall (i) rank *pari passu* with each other and (ii) be subordinate to the claims of other unsecured creditors of the Corporation.**

***Section 11.*** **Further Assurances; Additional Powers; Miscellaneous Matters**

**(a)** **Members, Limited Members and Settling Banks of the Corporation shall assist and cooperate with the Corporation to effectuate any Transfer of the Business from the Corporation to a Transferee, including without limitation (i) by complying with the terms and conditions of this Rule 42 and their obligations hereunder and (ii) by providing the Corporation and the Transferee with such financial and operational information as they may request. The Corporation may provide to a Transferee any financial and operational information it has with respect to Members, Limited Members and Settling Banks of the Corporation as may be necessary and appropriate to effectuate an orderly Transfer of the Business from the Corporation to the Transferee.**

**(b)** **The Corporation may take such other actions and enter into such other arrangements (on behalf of itself and its Members, Limited Members and Settling Banks) as may be necessary and appropriate to effectuate an orderly Transfer of the Business from the Corporation to a Transferee, and otherwise accomplish the purposes of the Wind-down Plan.**

**(c)** **As a condition to receiving, and by virtue of accepting, the continuing benefits of being Members, Limited Members and Settling Banks of the Corporation, such Members, Limited Members and Settling Banks (i) hereby expressly agree to the arrangements set forth in this Rule 42 relating to their becoming Members, Limited Members and Settling Banks, as the case may be, of the Transferee in the circumstances described herein and (ii) hereby expressly grant to the Corporation an irrevocable power of attorney to execute and deliver on their behalf such documents and instruments as the Transferee may request for this purpose. As Members, Limited Members and Settling Banks of the Corporation, such Members, Limited Members and Settling Banks are subject to the Rules and Procedures of the Corporation.**

**(d)** **No actions taken or omitted to be taken by the Corporation pursuant to this Rule 42 shall be deemed to constitute a default by the**

**Corporation in the performance of any of its other obligations to Members, Limited Members and Settling Banks of the Corporation pursuant to any other Rules and Procedures of the Corporation.**

**(e)** **The Corporation shall have no liability to any Members, Limited Members, or Settling Banks of the Corporation for any actions taken or omitted to be taken by the Corporation pursuant to this Rule 42.**

**(f)** **The Corporation shall have no liability to any third parties, including any customers or clients of any Members, Limited Members or Settling Banks of the Corporation, for any actions taken or omitted to be taken by the Corporation pursuant to this Rule 42.**

**(g)** **In connection with the Transfer of the Business from the Corporation to the Transferee, (i) the Corporation shall assign all of its Member Agreements, Limited Member Agreements and Settling Bank Agreements to the Transferee and (ii) the Transferee shall assume such Member Agreements, Limited Member Agreements and Settling Bank Agreements.**

**(h)** **All rights of the Corporation that are not assigned to the Transferee in connection with the Transfer of the Business from the Corporation to the Transferee, including any claims of the Corporation against Members, Limited Members and Settling Banks arising at any time prior to the Transfer Time, shall remain rights of the Corporation, enforceable by the Corporation in accordance with their terms and subject to applicable law (including insolvency law).**

**(i)** **All obligations and liabilities of the Corporation that are not assigned to and assumed by the Transferee in connection with the Transfer of the Business from the Corporation to the Transferee shall remain obligations and liabilities of the Corporation, enforceable against the Corporation in accordance with their terms and subject to applicable law (including insolvency law).**

**(j)** **In the event of any conflict between the provisions of this Rule 42 and any other Rules and Procedures of the Corporation, the provisions of this Rule 42 shall prevail.**

~~**When a Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member notifies the Corporation that it intends to wind down its activities, the Corporation may, in its sole discretion, in order to protect itself and its participants, determine that such Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member is a "Wind Down Member". In that event and, without limiting any other rights of the Corporation under these**~~

~~Rules and Procedures, the Corporation may impose conditions on, or take actions with respect to, the Wind-Down Member as provided below.~~

~~As soon as practicable after the Corporation determines that a Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member is a Wind-Down Member, the Corporation shall notify the Wind-Down Member, all other participants and the SEC of such determination.~~

~~The Corporation may, in its discretion, impose conditions on, or take actions with respect to, the Wind-Down Member as appropriate to mitigate risk the Corporation perceives may be presented by the Wind-Down Member, including but not limited to, the following:~~

~~(i) Permitting the Wind-Down Member to submit to the Corporation only transactions that serve to support the wind-down;~~

~~(ii) Permitting the Wind-Down Member to continue use of one or more of the Corporation's services, notwithstanding that it may not meet some or all of the financial or operational requirements for continuance as a Member or Limited Member, as applicable;~~

~~(iii) Restricting or modifying the Wind-Down Member's use of any or all of the Corporation's services (whether generally, or with respect to certain transactions);~~

~~(iv) Requiring additional assurances of the financial responsibility or operational capability of the Wind-Down Member through, for example, submission of a guaranty of the Wind-Down Member's obligations to the Corporation by an entity acceptable to the Corporation and/or additional reporting by the Wind-Down Member;~~

~~(v) Agreeing to complete one or more trades to which the Wind-Down Member is a party prior to the time the Corporation's guaranty otherwise would become effective pursuant to these Rules and Procedures;~~

~~(vi) Requiring the Wind-Down Member to post increased Clearing Fund deposits and/or to post its Required Deposit all in cash or in proportions of cash, qualifying bonds and eligible Letters of Credit different from those permitted under Rule 4;~~

~~(vii) Prohibiting the Wind-Down Member from withdrawing Clearing Fund on deposit in excess of its Required Deposit;~~

~~(viii) Calculating the Required Deposit of the Wind-Down Member in a manner different from the applicable formulae provided in the~~

~~**Procedures, in order to more appropriately reflect the risk presented by the Wind-Down Member to the Corporation, such as for example, not applying certain components of such calculation; or**~~

~~**(ix) Liquidating by buying in or selling out, as applicable, any open positions of the Wind-Down Member, for the benefit of such Wind-Down Member with any profit or loss resulting therefrom being debited or credited, as applicable, to the settlement account of the Wind-Down Member.**~~

~~**If the Corporation takes, or mandates, any action pursuant to this Rule, the Corporation shall, as soon as practicable thereafter, notify the SEC and such other participants as it deems proper due to the nature of such action.**~~

~~**Notwithstanding the foregoing, the Corporation shall not be restricted from exercising any of its rights in these Rules or in any agreements between itself and the Wind-Down Member at any time, including the Corporation's right at any time to cease to act for the Wind-Down Member pursuant to Rule 46.**~~

RULE 60. (~~RULE NUMBER RESERVED FOR FUTURE USE~~**MARKET DISRUPTION AND FORCE MAJEURE**)

**Section 1. Market Disruption Events**

**On the happening of any one or more of the events or circumstances set out below (each a "Market Disruption Event") which, in any case, is likely to materially affect or has materially affected the business, operations, safeguarding of securities or funds, or physical functions of the Corporation, including performance by the Corporation of any obligations under these Rules & Procedures, the Corporation shall be entitled to take such action as is set out in this Rule 60:**

**(a) a general suspension or limitation of trading on the New York Stock Exchange, NASDAQ, or any other exchange or market relevant to the pricing or trading of securities cleared and settled through the Corporation;**

**(b) the declaration of a trading or banking moratorium in the United States or New York State;**

**(c) any international organization, the government of any nation, state, or territory, or any institution or agency thereof, or any self-regulatory organization taking action of a nature likely to affect the normal course of business, including performance by the Corporation of obligations under these Rules & Procedures;**

**(d) the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of any payment, bank transfer or wire, or securities settlement system;**

**(e) the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of any cash or securities depository, custodian or clearing bank, or any material variation of such depository's, custodian's or clearing bank's processing or turnaround times, whether or not occasioned by action of such depository, custodian or clearing bank; or**

**(f) any Force Majeure, which shall include (without limitation) any terrorist or other criminal action, war or hostilities between any nations, national emergency, riot, civil unrest, acts of God or the public enemy, fire or other casualty, flood, accident, disaster (including any nuclear, atomic, environmental, or natural disaster), sabotage, bomb threat, labor dispute, embargo, the unavailability, failure, malfunction, or restriction of communication, computer, or data processing systems or facilities, or of software or technology, cyber attack, lack of transportation facilities, interruption (whether partial or total) of power supplies or other utility or**

**service, or any event, situation, or circumstance beyond the reasonable control of the parties (whether or not similar to any of the foregoing), including those imminent or threatened.**

**Section 2. Powers of the Corporation**

**If the Board of Directors or any officer of the Corporation listed below determines, in its, his, or her judgment that there is a Market Disruption Event, the Corporation shall be entitled to act (or refrain from acting) as prescribed in Section 3 of this Rule 60. To the extent practicable, the determination of the existence of a Market Disruption Event, and the actions to be taken in response thereto, shall be made by the Board of Directors at a meeting where a quorum is present and acting. However, if the Corporation is unable to convene a Board meeting promptly and timely in such event, then such determination may be made by either the Chief Executive Officer, the Chief Financial Officer, the Group Chief Risk Officer, or the General Counsel, or by any management committee on which all of the foregoing officers serves (an "Officer Market Disruption Event Action"), provided that the Corporation shall convene a Board meeting as soon as practicable thereafter (and in any event within 5 business days following such determination) to ratify, modify or rescind such Officer Market Disruption Event Action.**

**Section 3. Authority to take Actions**

**Upon the determination that there is a Market Disruption Event, the Corporation shall be entitled, during the pendency of such Market Disruption Event, to:**

**(a) suspend the provision of any or all services of the Corporation; and**

**(b) take, or refrain from taking, or require Members and/or Limited Members (whether or not they are affected by the Market Disruption Event) to take or refrain from taking, any and all action which the Corporation considers appropriate to prevent, address, correct, mitigate or alleviate the event and facilitate the continuation of services as may be practicable, and, in that context, issue instructions to Members and/or Limited Members.**

**Section 4. Notifications**

**4.1 Each Member and Limited Member shall notify the Corporation immediately upon becoming aware of any Market Disruption Event.**

**4.2 The Corporation shall promptly notify Members and Limited Members of any action the Corporation takes or intends to take pursuant to Section 3 of this Rule 60.**

**4.3 The Corporation shall attempt to consult with officials of the Securities and Exchange Commission prior to the Corporation taking any action pursuant to Section 3 of this Rule 60; provided, however, that the authority contained herein shall not be conditioned by such consultation.**

**The Corporation shall advise the Securities and Exchange Commission as soon as practicable by telephone, and confirmed in writing, of any action taken by the Corporation pursuant to Section 3 of this Rule 60, and a record of such writing shall be promptly made and filed with the Corporation's records and shall be available for inspection by any Member or Limited Member during regular business hours on business days.**

**The Corporation shall also advise the Securities and Exchange Commission as soon as practicable by telephone, and confirmed in writing, at such time it determines that there is no longer a Market Disruption Event and the Corporation terminates the actions taken by the Corporation pursuant to Section 3 of this Rule 60. A record of such writing shall be promptly made and filed with the Corporation's records and shall be available for inspection by any Member or Limited Member during regular business hours on business days.**

**Section 5. Certain Miscellaneous Matters**

**(a) Without limiting any other provisions in these Rules & Procedures concerning limitations on liability, none of the Corporation, its directors, officers, employees, agents, or contractors shall be liable to a Member, Limited Member or any other person (including any customer or client thereof) for:**

**(i) any failure, hindrance, interruption or delay in performance in whole or in part of the obligations of the Corporation under the Rules or Procedures, if that failure, hindrance, interruption or delay arises out of or relates to a Market Disruption Event; or**

**(ii) any loss, liability, damage, cost or expense arising from or relating in any way to any actions taken, or omitted to be taken, pursuant to this Rule 60.**

**(b) The power of the Corporation to take any action pursuant to this Rule 60 also includes the power to repeal, rescind, revoke, amend, or vary any such action.**

**(c) The powers of the Corporation pursuant to this Rule 60 shall be in addition to, and not in derogation of, authority granted elsewhere in these Rules & Procedures to take action as specified therein.**

**(d) In the event of any conflict between the provisions of this Rule 60 and any other Rules or Procedures, the provisions of this Rule 60 shall prevail.**