



250 Massachusetts Avenue, N.W.
Washington, D.C. 20001
www.robinhood.com

August 3, 2022

VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: *Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Revise the Excess Capital Premium Charge (Rel. No. 34-95026; File No. SR-NSCC-2022-005)*

Dear Ms. Countryman:

Robinhood Securities, LLC (“Robinhood Securities” or “the Firm”)¹ appreciates the opportunity to comment on the National Securities Clearing Corporation’s (“NSCC”) Proposed Rule Change to Revise the Excess Capital Premium Charge (“Proposal”).² The NSCC Proposal would revise the Excess Capital Premium (“ECP”) charge by enhancing the methodology for calculating the charge and removing NSCC’s discretion to waive or reduce the charge. While Robinhood Securities supports the NSCC’s efforts to improve the transparency of the rules regarding the ECP charge, the Firm believes that the NSCC: (1) has failed to support its Proposal to eliminate discretion to reduce or waive the ECP charge and, therefore, should retain such discretion; (2) should take into account a member firm’s ability to pay for customer trades, including the existence of committed credit lines; (3) should adjust its Proposal to provide member firms with a cure period before assessing the ECP charge; and (4) should be required to provide support for why the Excess Capital Ratio cap of 2.0 is appropriate.

I. NSCC Has Failed to Provide an Analysis of What Happens in Circumstances Where it No Longer Has Discretion to Reduce or Waive ECP Charges and, Therefore, NSCC Should Retain Its Discretion

NSCC’s support for eliminating its discretion to reduce or waive an ECP charge relies primarily on its impact study. The NSCC explains that the impact study shows that during June 1, 2020 through December 31, 2021, ECP charges would have been reduced by 65%, and further states how during the same period NSCC reduced ECP charges by \$38.80 billion and waived a total of 33 ECP charges that

¹ Robinhood Securities is a wholly owned subsidiary of Robinhood Markets, Inc. (“Robinhood Markets”). Robinhood Securities is a member of NSCC and provides clearing and settlement services to its affiliate introducing broker-dealer, Robinhood Financial LLC (“Robinhood Financial”). Robinhood Financial provides brokerage services to approximately 22 million retail investors.

² See Securities Exchange Act Rel. No. 95026 (June 2, 2022), 87 Fed. Reg. 34913 (June 8, 2022) (Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, of File No. SR-NSCC-2022-005). Although the comment period ended on June 29, 2022, the Firm respectfully requests that the Staff consider the comments submitted herein.

totaled \$26.12 billion. NSCC explains that under the Proposal, during the impact study period, waivers would not be necessary, or they would have been “reduced.” However, it is unclear how many situations would have resulted in a member firm not being able to pay the reduced ECP charges.

Furthermore, the NSCC does not provide any details regarding what happens if a member firm cannot pay the ECP charge within the narrow timeframe allowed by NSCC rules. Whereas there is currently complete clarity as to NSCC’s discretion to waive or limit the ECP charge, it is fair to say there is little to no clarity about NSCC’s ability to use discretion as to which limitations will be placed on a member firm in the event it does not timely pay an ECP charge. Eliminating the ability to use discretion with respect to the application of the ECP charge therefore puts much more pressure on the issue of which remedies NSCC will seek in a nonpayment situation, and NSCC does not include rule amendments in the Proposal that provide the needed clarity. For example, what if a member firm is short of paying its ECP charge by a relatively small amount during a time of market volatility? Would the NSCC require the member firm to cease trading operations until customer trades settle, raise additional capital, or adjust its business operations? NSCC’s ability to reduce or waive ECP charges has existed for almost 16 years and there is no evidence that NSCC has inappropriately reduced or waived any ECP charges. Clearly, NSCC owes the Securities and Exchange Commission (“Commission”) a detailed analysis as to what happens if it is unable to reduce or waive an ECP charge.

These concerns are real. When the Commission considered the NSCC’s ECP proposal in 2006, commenters raised concerns that the ECP charge “would have an anticompetitive effect and/or place an undue burden on competition in that smaller broker dealers would be unable to meet the higher clearing fund obligations and would be forced out of business which could result in less competition among broker-dealers.”³ In addition, commenters also argued that “[o]ne result of the clearing fund premium would be that small issuers and emerging companies would not have such smaller broker-dealers to assist in capital formation.”⁴

NSCC addressed these concerns by noting that competition among brokers was healthy with over 6000 registered broker-dealers.⁵ As of 2021 there were 3394 FINRA-registered broker-dealers.⁶ In addition, NSCC pointed out that broker-dealers could raise additional capital, adjust their business, or seek to clear through another firm. NSCC also pointed out that broker-dealers do not have a right to be a direct member of a registered clearing agency. And, most importantly, in response to the comments, NSCC included in the 2006 Proposal the ability to reduce or waive the ECP and return all or a portion of the ECP if “it believes that the imposition or maintenance of the Excess Capital Premium is not necessary or appropriate.”⁷ NSCC argued:

³ See Securities Exchange Act Release No. 54457 (Sept. 15, 2006), 71 Fed. Reg. 55239 at 55240 (Sept. 21, 2006) (Notice of Filing and Order Granting Accelerated Approval of File Nos. SR-FICC-2006-03 and SR-NSCC-2006-03) (“2006 Proposal”).

⁴ *Id.*

⁵ *Id.*

⁶ <https://www.finra.org/media-center/statistics>

⁷ 2006 Proposal at 55241.

NSCC and FICC⁸ recognize, as commenters point out, that there *will* be circumstances where imposing the premium on a member is not necessary, or may result in unintended consequences. It is precisely for these reasons that the proposed rule provides the clearing agencies with the discretion to either forego collection of the premium, or to collect a lesser amount. Of the commenters, only Man objects to this discretion, suggesting that the proposed rule should contain specific guidelines with respect to who at NSCC and FICC may grant exceptions to the collateral premium requirement, and the criteria, circumstances and procedures for exercising such discretion.

The discretion to reduce or eliminate the collateral premium requirement will be exercised by those officers of NSCC and FICC who, at the relevant time, are in the best position to assess (i) the risk presented by the particular member to the clearing agency, other members and the system, and (ii) whether there exist any facts or circumstances that merit action to modify the requirement. It would be contrary to the principle and purpose of discretion to require that NSCC and FICC adopt, in advance of the event, detailed criteria, circumstances and procedures for exercising such discretion – particularly given that these situations are likely to be very fact and circumstances driven. In this connection, it should be noted that the discretion that NSCC and FICC may exercise under the proposed rule is discretion to reduce or eliminate – and not discretion to increase – the formula-generated collateral premium.⁹

The existence of the NSCC’s discretion with respect to the application of the ECP charge was part of the Commission’s consideration to approve the 2006 Proposal. Robinhood believes that although NSCC’s revisions to the ECP calculation may reduce the instances in which the ECP charge will be assessed, in the future there *will* be circumstances where the ECP charge is “not necessary, or may result in unintended consequences.” For this reason, Robinhood strongly believes NSCC should retain the discretion to reduce or waive the ECP charge. At the very least, the NSCC should be required to provide clarity concerning what will happen to a member firm if it is unable to pay the ECP charge.

II. The ECP Calculation Should Include a Member Firm’s Ability to Pay for Customer Trades by Settlement.

a. The ECP Calculation is Flawed Because it Fails to Account for a Member Firm’s Ability to Pay for Customer Trades by Settlement

NSCC’s Proposal relies upon a member firm’s net capital and applies a volatility component to determine its ability to pay for customer trades by settlement. The volatility component:

is designed to capture the market price risk associated with each Member’s portfolio at a 99th percentile level of confidence. NSCC has two methodologies for calculating the volatility component – a model-based volatility-at-risk, or VaR, charge and a haircut-based calculation, for certain positions that are excluded the VaR charge calculation. The charge that is applied to a Member’s Required Fund Deposit with respect to the volatility component is referred to as the volatility charge and is the sum of the applicable VaR charge and the haircut-based calculation. Amounts calculated pursuant to Sections I(A)(1)(a)(iv) of the Procedure XV with respect to long

⁸ The Commission considered the NSCC and the Fixed Income Clearing Corporation (“FICC”) proposals in the same order.

⁹ Cheryl T. Lambert, Managing Director, Risk Management, Depository Trust & Clearing Corporation <https://www.sec.gov/comments/sr-nbcc-2006-03/nbcc200603-8.pdf> (emphasis in original).

positions in Net Unsettled Positions in Family-Issued Securities are designed to address wrong-way risk presented by these positions, not volatility risks, and, as such, are not a part of a Member's volatility charge.¹⁰

Putting aside that the volatility component alone results in a 99th percentile level of confidence, NSCC's rules fail to consider two important indications of a member firm's ability to pay for customer trades by settlement: (1) customer cash held by the member firm in segregated Rule 15c3-3 accounts; and (2) house margin requirements for securities that cause an outsized charge. While the Options Clearing Corporation ("OCC") permits member firms to pledge customer securities to meet OCC margin requirements, the NSCC does not offer any similar program for a member firm to demonstrate that it can meet customer transactions beyond depositing corporate cash. For example, what if the Depository Trust Company ("DTC") held Rule 15c3-3 accounts for NSCC member firms that would be included in the ECP calculation as a credit to capital?

Robinhood Securities notes that, by way of example, during the Meme Stock Market Event on January 28, 2021, the Firm already had imposed a 100% house margin requirement for certain meme stock securities. In fact, although Robinhood Securities incurred a VaR charge of \$850 million attributable to AMC and approximately \$250 million in GME, both securities were already on a 100% house margin maintenance requirement. In short, Robinhood Securities had the ability to pay for customer trades, but NSCC rules do not recognize such. Clearly, NSCC appropriately exercised its discretion to waive a \$2.2 billion ECP charge on Robinhood Securities during the Meme Stock Market Event, as such a charge would have been unnecessary and would have resulted in unintended consequences.

b. The ECP Calculation Should Include Consideration of a Member Firm's Committed Credit Lines

Robinhood Securities believes that the NSCC should incorporate a member firm's committed credit lines into the ECP calculation. The inclusion of a member firm's committed credit lines makes a great deal of sense. First, the inclusion of committed credit lines would incent firms to ensure such lines are in place during times of market volatility. Second, NSCC has ready access to such information via the Supplemental Liquidity Schedule that is filed with a firm's FOCUS Report and separately, NSCC and DTC can request such information pursuant to Rule 2b and DTC Rule 2. Finally, incorporating the committed credit lines into the calculation also makes sense as the credit lines would need to be accessed to meet an ECP charge. Certainly, it is a much more efficient for NSCC to consider committed credit lines in the ECP calculation rather than require member firms to draw on such lines to satisfy the payment of the ECP charge.

If the NSCC incorporates committed credit line information into the ECP calculation, NSCC should clarify that its discretion to rely upon updated capital information also includes its ability to rely on updated committed credit line information.

III. If a Member Firm Incurs an ECP Charge, NSCC Should Provide the Firm a Time to Cure.

The NSCC's Proposal includes the change from using excess net capital to using a member firm's net capital as the numerator. Using the larger net capital calculation is a positive step and Robinhood Securities fully supports the NSCC using it as part of the ECP calculation. Robinhood Securities, however, does not believe that it is consistent with the public interest for NSCC to make changes that would result in a member firm and its customers potentially being shut out from access to the equities

¹⁰ Proposal, 87 Fed. Reg. at 34914-15, n.20.

markets because the member firm is unable to pay the ECP penalty. It is important to remember that providing a cure period for the ECP charge, does not mean the NSCC is at increased risk of default – the margin/volatility charge should appropriately address market price risk before settlement. Again, the volatility component has a 99th percentile level of confidence and before assessing the ECP charge a member firm should have through the next day to increase its capital, expand committed credit lines, or make changes to its business operations.

IV. NSCC Should Provide Further Support for its ECP Cap of 2.0.

While Robinhood Securities fully supports an ECP cap, the Firm does not believe that the NSCC has provided sufficient data as to why the 2.0 cap is appropriate. The NSCC Proposal includes an ECP penalty cap of 2.0. The NSCC supports the 2.0 ratio by noting, “[h]istorically, the Excess Capital Ratio has rarely exceeded 2.0 in the calculation of Members’ ECP charges, and in cases when 2.0 was exceeded NSCC typically exercised the discretion provided to it in the Rules to reduce the applicable charge.”¹¹

NSCC should provide more data as to the instances in which a member firm would have exceeded the proposed 2.0 cap and whether a lower cap would still have the desired effect. For example, would an ECP cap of 1.5 provide an incentive to member firms to ensure they are adequately capitalized to avoid the assessment of the ECP charge, while at the same time not overburdening firms in times of unusual market volatility?

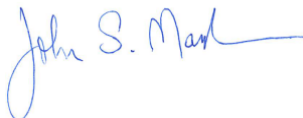
V. Conclusion

Robinhood Securities supports the NSCC’s efforts to provide greater transparency and certainty to the calculation of the ECP charge. As noted here, however, the Firm believes it is in the public interest to propose rules that do not unnecessarily threaten NSCC member firms and the investing public’s access to the equity markets. As such, Robinhood Securities believes that NSCC should modify its Proposal as noted above.

* * * *

We appreciate the opportunity to comment on SR-NSCC-2022-005. Please contact the undersigned if you have any questions.

Sincerely,



John S. Markle
VP and Deputy General Counsel, Product and Regulatory

¹¹ Proposal, 87 Fed. Reg. at 34916.