



8/24/2022

VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman
Office of the Corporate Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

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:

Apex Clearing Corporation ("Apex Clearing") carries over 22 million accounts for over 250 correspondents and custodies over \$100 billion in assets for those retail investors. Apex's correspondents include large financial services firms such as Ally Bank and Goldman Sachs Marcus, fin-techs such as Webull, Open to the Public, SoFi, Stash and M1, and advisors such as Betterment. In 2021, Apex Clearing processed over 800 million trades for the retail customers our correspondents serve.

Apex Clearing appreciates the opportunity to respond to the Proposal¹ soliciting comment on National Securities Clearing Corporation's ("NSCC") proposed rule changes to revise the Excess Capital Premium ("ECP") charge and the rules regarding the ECP charge.

Since the ECP charge was adopted, NSCC has exercised its discretion to both reduce and waive the ECP charge when NSCC has deemed it necessary or appropriate. The discretion to adjust, waive or return an ECP charge was designed to provide NSCC with the ability to determine when a calculated ECP charge may not be necessary or appropriate to mitigate the risks it was designed to address. As noted in the adopting release, the discretion to waive or reduce the ECP charge is particularly important where, "[W]here management has determined that the premium results from an unusual or non-recurring circumstance where management believes it would not be appropriate to assess the premium. Examples of such circumstances are a member's late submission of trade data for comparison or trade recording that would have otherwise reduced the margined position if timely submission had occurred or an unexpected haircut or capital charge that does not fundamentally change a member's risk profile."²

¹ See Securities Exchange Act Rel. No. 34-95026 (June 2, 2022), 87 FR 34913 (June 8, 2022) (Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, of File No. SR-NSCC-2022-005).

² Securities and Exchange Commission, Release No. 34-54457, September 15, 2006, pg 12, fn. 14

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Notwithstanding the possibility for unusual or non-recurring circumstances that would make it inappropriate to assess the ECP charge, the proposed rule changes eliminate NSCC's discretion to waive or reduce the ECP charge. Apex Clearing supports the proposed rule changes to the extent that they enhance transparency and predictability; however, Apex Clearing does not believe that it is consistent with the public interest for NSCC to eliminate its ability to adjust, waive or return an ECP charge without providing sufficient time to cure or remediate the conditions that gave rise to the ECP charge. Apex believes that a minimum reasonable cure period should be the length of the settlement cycle, such that if a member firm submits trades on Monday, is deemed to be in violation on Tuesday due to Monday's trades, the member firm should have the opportunity to allow those trades to run through the settlement cycle on Wednesday before an ECP charge is assessed.

The addition of a meaningful cure period would give the affected member firm time to increase capital or make changes to business operations to cure and avoid potentially harmful disruptions to its customers. Moreover, a cure period would also permit the passage of time to remedy or otherwise mitigate any unusual or non-recurring circumstances that resulted in the imposition of the ECP charge in which there may not actually be a situation that warrants an ECP charge. The removal of NSCC's discretion without the creation of a meaningful cure period could result in an affected firm and its customers being denied access to the equities markets because the member firm is unable to satisfy the ECP charge. The inability of a firm to access equity markets due to an ECP charge could result in additional disruption and risk to the overall financial system and equity markets and needlessly harm retail investors that do business with the affected firm. Providing a cure period for the imposition of an ECP charge, does not introduce additional risk to the NSCC – the margin/volatility charge should appropriately address any settlement risk, as it has since the discretionary ECP charge was introduced.

Finally, Apex Clearing believes the Commission should consider whether a fail premium for shares that should have been delivered to a member firm, but otherwise have not been delivered due to no fault of the member firm, should be factored into any ECP charge calculation. The consequences of doing so could result in subjecting a member firm and its customers to the harms described above through no fault of the member firm.

Apex Clearing supports NSCC's efforts to enhance transparency and predictability to the imposition of the ECP charge. However, Apex Clearing believes it is in the public interest to propose rules that would not unnecessarily introduce risk into the equities markets or threaten retail investors' access to those markets. As such, Apex Clearing believes that the NSCC should modify the proposed rule changes to include a cure period for an ECP charge. Apex Clearing appreciates the opportunity to comment on SR-NSCC-2022-005.

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Please contact the undersigned if you wish to discuss further or have any questions.

Sincerely,

William Capuzzi

William Capuzzi

Chief Executive Officer