

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104270; File No. SR-NSCC-2025-013]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving of Proposed Rule Change to Amend the CNS Fails Charge in the NSCC Rules

November 25, 2025.

I. INTRODUCTION

On September 5, 2025, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposed rule change SR-NSCC-2025-013 (“Proposed Rule Change”) to modify the NSCC Rules & Procedures (“Rules”) regarding the margin charge applied when a Member fails to settle a Short Position or a Long Position by the applicable settlement date (“CNS Fails Charge”). The Proposed Rule Change was published for comment in the *Federal Register* on September 16, 2025.³ The Commission has received no comments on the Proposed Rule Change.

On September 26, 2025, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule changes.⁵ For the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 103952 (Sept. 11, 2025), 90 FR 44735 (Sept. 16, 2025) (File No. SR-NSCC-2025-013) (“Notice of Filing”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 104094 (Sept. 26, 2025), 90 FR 46977 (Sept. 30, 2025) (File No. SR-NSCC-2025-013).

reasons discussed below, the Commission is approving the Proposed Rule Change.

II. BACKGROUND

NSCC is a central counterparty, which means that it interposes itself as the buyer to every seller and the seller to every buyer for the financial transactions it clears. NSCC provides CCP services for the U.S. equity market. As such, NSCC is exposed to the risk that one or more Members may fail to make a payment or to deliver securities.⁶

A key tool that NSCC uses to manage its credit exposures to its Members is the daily collection of the Required Fund Deposit (*i.e.*, margin) from each Member. A Member's margin is designed to mitigate potential losses to NSCC associated with liquidation of that Member's portfolio in the event of that Member's default. The aggregate of all NSCC's Members' Required Fund Deposits constitutes the Clearing Fund of NSCC, which NSCC would access its Clearing Fund should a defaulting Member's own Required Fund Deposit be insufficient to satisfy losses to NSCC caused by the liquidation of that Member's portfolio.⁷

NSCC's Continuous Net Settlement System ("CNS") is an automated accounting and securities settlement system that centralizes and nets the settlement of compared and recorded securities transactions and maintains an orderly flow of security and money balances.⁸ Within CNS, all eligible compared and recorded transactions for a particular Settlement Date are netted by issue into one position per Member. The position can be a net Long Position (receive), net Short Position (deliver), or flat. As a continuous net system, those positions are further netted with positions of the same CNS Security that remain open after their original scheduled

⁶ Capitalized terms not defined herein shall have the meanings ascribed to them in the Rules, *available at* <https://www.dtcc.com/legal/rules-and-procedures.aspx>.

⁷ *See* Rule 4 (Clearing Fund) and Procedure XV, *supra* note 6.

⁸ *See* NSCC Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation), *id.*

settlement date (usually one business day after the trade date, or T+1), so that transactions scheduled to settle on any day are netted with CNS Fails Positions (*i.e.*, positions that have failed in delivery or receipt on the Settlement Date), which results in a single deliver or receive obligation for each Member for each CNS Security in which the Member has activity.⁹

Each Member's Required Fund Deposit is comprised of several risk-based component charges, including the CNS Fails Charge.¹⁰ NSCC calculates and assesses the CNS Fails Charge on a daily basis from Members with CNS Fails Positions, to offset the risk exposures to NSCC and incentivize Members to satisfy their obligations on Settlement Date. NSCC calculates the CNS Fails Charge based on the Member's credit rating derived from the Credit Risk Rating Matrix ("CRRM"),¹¹ meaning that, for each Member, it multiplies the Current Market Value for that Member's aggregate CNS Fails Positions by a percentage.¹²

III. DESCRIPTION OF THE PROPOSED RULE CHANGE

NSCC is proposing to amend the provisions of the Rules regarding the CNS Fails Charge by (i) discontinuing the application of the CNS Fails Charge on Long Positions, and (ii) eliminating the CRRM from the calculation and instead assessing the charge based on the duration that the failed Short Positions remain outstanding, as discussed below.

⁹ See Notice of Filing, *supra* note 3, 90 FR at 44736.

¹⁰ The CNS Fails Charge is currently imposed by NSCC pursuant to Procedure XV (Clearing Fund Formula and Other Matters), Section I.(A)(1)(d), *supra* note 6.

¹¹ The CRRM is a credit risk rating model NSCC utilizes to evaluate and rate the credit risk of NSCC's U.S. bank, foreign bank, and U.S. broker-dealer Members, and rate such Members based upon qualitative and quantitative information. See definition of Credit Risk Rating Matrix in Rule 1 (Definitions and Descriptions), *id.*

¹² For a Member that is not rated on the CRRM and for a Member that is rated 1 through 4 on the CRRM, the CNS Fails Charge is 5% of the Member's aggregate CNS Fails Positions. For a Member that is rated 5 or 6 on the CRRM, the CNS Fails Charge is 10% of the Member's aggregate CNS Fails Positions. For a Member that is rated 7 on the CRRM, the CNS Fails Charge is 20% of the Member's aggregate CNS Fails Positions. See *supra* note 10.

First, the Proposed Rule Change would discontinue the application of the CNS Fails Charge on failed Long Positions. CNS is a net flat system and allocates shares received via an algorithm to those who are set to receive.¹³ CNS can only allocate shares if a Member with a Short Position makes the delivery into CNS on the Settlement Date. Members have limited control whether they will receive shares from CNS if the corresponding Members set to deliver do not deliver shares in their entirety to CNS. NSCC states that, given this limited ability to control if a Member is allocated shares that it is set to receive, it is not appropriate to assess a CNS Fails Charge on Members who fail to receive an allocation from CNS for a Long Position.¹⁴ Additionally, NSCC states that CNS Fails Positions, including failed Long Positions, are currently subject to NSCC's normal risk margining procedures, and risk associated with these positions is accounted for in the existing risk calculations.¹⁵ The Proposed Rule Change would revise the definition of CNS Fails Position in Rule 1 to remove the reference to a Long Position.

Second, the Proposed Rule Change would eliminate the use of the CRRM from the CNS Fails Charge calculation, which currently uses a percentage based on each Member's CRRM rating. NSCC states that the risk posed from the fail to deliver is specific to the individual position that is failing, and that a better measure of the risk related to the CNS Fails Position is how long the position has been outstanding.¹⁶ NSCC states that since the risk posed by the failed position is less influenced by the Member that failed to make delivery, the CNS Fails Charge

¹³ See Notice of Filing, *supra* note 3, 90 FR at 44736.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 44737.

should not be scaled to Member-specific criteria such as CRRM.¹⁷ As such, NSCC is proposing to eliminate CRRM from the charge calculation.

Instead, the Proposed Rule Change would assess the CNS Fails Charge based on the length of time a Member has been failing to deliver a position. NSCC states that while its existing margin methodology addresses position-specific risk from a failed position, a position that a Member has failed to deliver for an extended period may be indicative of additional risk associated with the position.¹⁸ NSCC states that to encourage timely delivery of settlement obligations and address this additional risk, it is proposing to assess the Charge using a percentage ranging from 5% to 100% based on the length of time the position remains outstanding.¹⁹

The percentages initially will be (i) 5% for CNS Fails Positions that have remained outstanding 1 to 4 Business Days, (ii) 15% for CNS Fails Positions that have remained outstanding 5 to 10 Business Days, (iii) 20% for CNS Fails Positions that have remained outstanding 11 to 20 Business Days, and (iv) 100% for CNS Fails Positions that have remained outstanding longer than 20 Business Days.²⁰ NSCC states that the proposed percentages are designed to provide a mechanism to reduce fails and protect NSCC from potentially incurring higher costs in sourcing the CNS Fails Positions in a Member default event, where the haircut

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ NSCC will post the applicable percentages for CNS Fails Positions on its website and provide reports to Members detailing their open positions, including their CNS Fails Positions and associated CNS Fails Charges for each. *See* Notice of Filing, *supra* note 3, 90 FR at 44737.

applied increases the longer the CNS Fails Position remains outstanding.²¹ NSCC states that, in connection with its regular assessment of its margining methodologies, NSCC will review the CNS Fails Charge haircut percentages to determine the effects on the Members and whether the percentages continue to be adequate.²²

While short-term fails may reflect operational delays, extended fails, especially those exceeding 20 Business Days, might signal a reduced or impaired market liquidity that increases market price risk to NSCC.²³ NSCC states that it determined that the risk associated with a failed position increases the longer it remains unsettled, and as such, the proposed change is intended to reflect this elevated risk exposure and ensure NSCC is adequately protected by discouraging prolonged settlement failures and promoting market discipline.²⁴

If a Member delivers a position for a CNS Fails Position in the night cycle following the applicable settlement date, NSCC will account for the delivery amount and offset the failed quantity by the quantity delivered in the night cycle.²⁵ Additionally, if a Member's start of day position in a CUSIP that failed to be delivered the prior settlement date is net long for the portion of that position settling on the current business date, a fails charge will not be assessed.²⁶

The Proposed Rule Change would amend Procedure XV, Section I.(A)(1)(d) to remove the references to CRRM, and to provide that Members will be charged percentages for CNS Fails

²¹ See Notice of Filing, *supra* note 3, 90 FR at 44737.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

Position ranging from 5% to 100% based on the number of Business Days that the CNS Fails Positions have remained outstanding. The proposed changes would provide that NSCC shall post the applicable percentages on the NSCC website, and the percentages may be updated from time to time as announced by Important Notice.

NSCC conducted an impact study of the proposed changes based on data from January 2, 2024 through April 30, 2025 (“Impact Study”).²⁷ The Impact Study indicated that if the proposed changes had been in place during the Impact Study period, the proposed changes would have led to an aggregate reduction in CNS Fails Charges by approximately 56.1%, or \$238.5 million, primarily due to the removal of the charge on Long Positions.²⁸ NSCC observed a decrease of 16.9%, or \$35.6 million, in failure to deliver positions during the Impact Study, primarily due to increases in the CNS Fails Charge on older CNS Fails Positions which offset the reduction in charge on positions failing for only a few days.²⁹

IV. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Act³⁰ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After careful review of the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and

²⁷ As part of the Proposed Rule Change, NSCC filed, as Exhibit 3, the Impact Study. Pursuant to 17 CFR 240.24b-2, NSCC requested confidential treatment of Exhibit 3.

²⁸ See Notice of Filing, *supra* note 3, 90 FR at 44737.

²⁹ *Id.* The Impact Study also revealed that NSCC-level backtest coverage remained above 99%, and no Member level coverage fell below 99%, with the proposed changes. *Id.*

³⁰ 15 U.S.C. 78s(b)(2)(C).

regulations thereunder applicable to NSCC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act³¹ and Rules 17ad-22(e)(4) and (6)(i) thereunder.³²

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

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to, among other things, 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 the clearing agency or for which it is responsible.³³ The Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act for the reasons stated below.

NSCC calculates and assesses the CNS Fails Charge from Members with CNS Fails Positions to offset the risk exposures to NSCC and incentivize Members to satisfy their obligations on Settlement Date, as discussed in Part II. The Proposed Rule Change would align the calculation and assessment of the Charge more appropriately and accurately to the risk that CNS Fails Positions pose to NSCC, as discussed in Part III. Specifically, the Proposed Rule Change would discontinue the application of the Charge to Long Positions since Members have limited control on whether they will receive shares from CNS, and risk associated with these positions is already accounted for in the existing risk calculations. Additionally, because the duration that the position has been outstanding is more indicative of the risk of the CNS Fails Position than a Member's CRRM rating, the Proposed Rule Change would replace the CRRM criteria in the calculation of the Charge with percentages based on how long the CNS Fails

³¹ 15 U.S.C. 78q-1(b)(3)(F).

³² 17 CFR 240.17Ad-22(e)(4) and (6)(i).

³³ 15 U.S.C. 78q-1(b)(3)(F).

Position has been outstanding. Thus, the Proposed Rule Change would result in a calculation of the CNS Fails Charge that is more closely associated with the risk specific to the individual position that is failing, while also providing a greater incentive for Members to deliver on long outstanding CNS Fails Positions. This more appropriate calculation and assessment of a charge designed to mitigate NSCC's risk exposure from CNS Fails Positions should help ensure that NSCC collects sufficient margin to manage risk exposure from these positions. By helping NSCC to collect sufficient margin, the Proposed Rule Change should better ensure that, in the event of a Member default, NSCC's operation of its critical clearance and settlement services would not be disrupted because of insufficient financial resources. Accordingly, the Proposed Rule Change should support NSCC's ability to provide prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.³⁴

Additionally, the Proposed Rule Change would help NSCC collect sufficient margin to cover potential losses in the event of a Member default by calculating the CNS Fails Charge based on the duration of the failed position, which, as discussed, may be indicative of additional risk associated with the position. As discussed in Part III, the Proposed Rule Change would assess the CNS Fails Charge using percentages ranging from 5% to 100% based on how long the position has been outstanding. NSCC states that these percentages are designed to protect NSCC from potentially incurring higher costs in sourcing the CNS Fails Positions in a Member default, where the haircut applied increases the longer the CNS Fails Position remains outstanding.³⁵ As described in Section II above, NSCC would access the mutualized Clearing Fund should a defaulted Member's own margin be insufficient to satisfy losses to NSCC caused by the

³⁴ *Id.*

³⁵ *See* Notice of Filing, *supra* note 3, 90 FR at 44737.

liquidation of that Member's portfolio. Therefore, by helping to ensure that NSCC has collected sufficient margin from Members, the Proposed Rule Change would minimize the likelihood that NSCC would have to access the Clearing Fund, thereby limiting non-defaulting Members' exposure to mutualized losses. By helping manage NSCC's risk exposure when a Member defaults, thus limiting the exposure of NSCC's non-defaulting members to mutualized losses, the Proposed Rule Change should help NSCC assure the safeguarding of securities and funds which are in its custody or control, consistent with Section 17A(b)(3)(F) of the Act.³⁶

B. Consistency with Rule 17ad-22(e)(4)

Rule 17Ad-22(e)(4) requires that, among other things, NSCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor and manage its credit exposures to participants and those exposures arising from its payment, clearing and settlement processes.³⁷

As discussed in Part II, NSCC assesses the CNS Fails Charge on Members with CNS Fails Positions in order to reduce credit exposures to NSCC resulting from those positions by obtaining from such Members financial resources commensurate with those credit exposures. To support this, the Proposed Rule Change aims to produce a more appropriate and accurate assessment and calculation of CNS Fails Charge based on the risk exposure to NSCC. The Proposed Rule Change would discontinue application of the Charge for Long Positions, since Members have limited control on the ability to receive shares from CNS, and risk associated with these positions is adequately accounted for in the existing risk calculations. Additionally, by replacing the CRRM criteria with percentages based on the age of the CNS Fails Positions, the

³⁶ 15 U.S.C. 78q-1(b)(3)(F).

³⁷ 17 CFR 240.17ad-22(e)(4).

Proposed Rule Change would lead to more accurate calculation of the CNS Fails Charge because the risk associated with the fail to deliver is specific to the individual position that is failing. By helping provide a more appropriate and accurate calculation and assessment of a charge designed to mitigate NSCC's risk exposure from CNS Fails Positions, the Proposed Rule Change should support NSCC's ability to manage its credit exposures, consistent with Rule 17ad-22(e)(4) under the Act.³⁸

C. Consistency with Rule 17Ad-22(e)(6)(i)

Rule 17Ad-22(e)(6)(i) requires that, among other things, NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.³⁹

As discussed above, the CNS Fails Charge is designed to cover NSCC's credit exposures to Members with CNS Fails Positions. The Proposed Rule Change would align the calculation and assessment of the Charge more closely to the risk that CNS Fails Positions pose to NSCC, by discontinuing application of the Charge to failed Long Positions for which Members have limited control and replacing the Member specific criteria in calculating the Charge with position specific one that is more indicative of the risk of the failed positions. Therefore, the Proposed Rule Change would help produce a more appropriate calculation of the Charge and therefore

³⁸ 17 CFR 240.17ad-22(e)(4).

³⁹ 17 CFR 240.17ad-22(e)(6)(i).

better cover NSCC's credit exposures to its Members, consistent with the requirements of Rule 17ad-22(e)(6)(i).⁴⁰

V. CONCLUSION

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A of the Act⁴¹ and the rules and regulations promulgated thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁴² that proposed rule change SR-NSCC-2025-013, be, and hereby is, APPROVED.⁴³

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

Sherry R. Haywood,

Assistant Secretary.

⁴⁰ *Id.*

⁴¹ 15 U.S.C. 78q-1.

⁴² 15 U.S.C. 78s(b)(2).

⁴³ In approving the Proposed Rule Change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁴⁴ 17 CFR 200.30-3(a)(12).