



NATIONAL  
SECURITIES  
CLEARING  
CORPORATION

RULES & PROCEDURES

TEXT OF PROPOSED RULE CHANGE

**Underlined and boldface** text indicates new text

**~~Strikethrough and boldface~~** indicates deleted text

## RULE 2B. ONGOING MEMBERSHIP REQUIREMENTS AND MONITORING

### SEC. 1. REQUIREMENTS

The qualifications and standards provided for in Rule 2A<sup>1</sup> shall be continuing membership requirements. In addition, each Member, Fund Member, Insurance Carrier/Retirement Services Member, Municipal Comparison Only Member, Mutual Fund/Insurance Services Member, Data Services Only Member, Settling Bank Only Member, Commission Billing Member, Third Party Administrator Member, Third Party Provider Member, Investment Manager/Agent Member and AIP Member shall comply with the ongoing informational and operational requirements set forth below.

### SEC. 2. DATA TO BE FILED WITH THE CORPORATION

#### A. Reports and Information

Each Member, Mutual Fund/Insurance Services Member, Fund Member, and Insurance Carrier/Retirement Services Member (each hereinafter in this rule referred to collectively as “participants”) shall submit to the Corporation the following reports and information as applicable to such participant, together with all addenda and amendments applicable thereto, within the time periods prescribed by the Corporation from time to time. (Unless specifically set forth below, the time periods prescribed by the Corporation are set forth in the form of notices posted at the Corporation’s Website. Pursuant to Section 7 of Rule 45, it is the participant’s responsibility to retrieve all notices daily from the Website.):

(a) with respect to each such participant, a copy of the participant’s annual audited financial statements and, with respect to each such participant whose membership is contingent upon a guarantee of a third party, a copy of the annual audited financial statements of such guarantor. If annual audited financial statements of the entity that is the participant or its guarantor are not available, the Corporation in its sole discretion may accept consolidated financial statements or financial information prepared at the level of the parent of such entity. Financial statements submitted in respect of an Insurance Company shall be prepared substantially in the form adopted by the National Association of Insurance Commissioners (the “NAIC”);

(b) with respect to a participant that is a broker or dealer registered under Section 15 of the Exchange Act, a copy of its: (i) Form X-17-A-5 (Financial and Operational Combined Uniform Single (“FOCUS”) Report); (ii) report of its independent auditors on internal controls; and (iii) any supplemental report required to be filed with the SEC pursuant to SEC Rule 17a-11 or 17 C.F.R. Section 405.3, or any successor rules or regulations thereto;

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<sup>1</sup> Including Addendum O to these Rules, as set forth in Section 1.B of Rule 2A.

(c) with respect to a participant that is a bank or a trust company, if the bank or trust company is required to file a Consolidated Report of Condition and Income ("Call Report"), a copy of its Call Report, and (to the extent not contained within such Call Reports) information containing each of its capital levels and ratios; if the bank or trust company is not required to file a Call Report, a copy of its unaudited quarterly financial statements as provided to the state regulatory authority having jurisdiction over the participant, containing each of its capital levels and ratios;

(d) with respect to a participant that is an SEC-registered investment adviser, copies of its Form ADV;

(e) with respect to a participant that is subject to capital or other financial requirements prescribed by its regulatory authority, copies of any regulatory notification required to be made when the participant's capital level or other financial requirement falls below the levels prescribed by the applicable regulator;

(f) with respect to a participant that has received from its regulators an extension of time by which one of the above-listed reports or submissions to the regulator is otherwise due, a copy of the extension letter or other regulatory communication granting such extension; and

(g) with respect to a participant that has provided to the SEC any notice required pursuant to paragraph (e) of the SEC's Rule 15c3-1 shall notify the Corporation of the provision of such notice, and shall furnish the Corporation with a copy of such notice, by the Close of Business on the day that it so provides such notice to the SEC.

The Corporation may from time to time require the submission of additional reports and other information as it may deem necessary or advisable. Reports and information provided to the Corporation pursuant to this Rule shall be provided in the form and to the persons or departments specified by the Corporation from time to time and the provisions of Rule 45 shall not apply thereto.

#### B. Notification of Changes in Condition

(a) Each Member, Mutual Fund/Insurance Services Member, Fund Member, Municipal Comparison Only Member, Insurance Carrier/Retirement Services Member, TPA Member, TPP Member, Investment Manager/Agent Member, AIP Member and Data Services Only Member shall:

- (i) promptly inform the Corporation, within two business days, both orally and in writing, if it is no longer in compliance with any of the relevant qualifications and standards for membership set forth in these Rules as applicable to its type of membership (regardless of whether in effect at

the time the participant was admitted), or with respect to any additional qualifications as required by the Corporation in connection with approval of its admission to, or continued participation in, the Corporation, including in the event of the participant becoming subject to a Statutory Disqualification. Such notification must be given by the participant as soon as practicable and in any event must be received by the Corporation within two business days from the date on which the participant first learns of its non-compliance;

- (ii) submit to the Corporation written notice of material organization changes including mergers, acquisitions, changes in corporate form, name changes at least 90 calendar days prior to the effective date of such event unless the member demonstrates that it could not have reasonably given notice within such timeframe.

(b) Each Member shall submit to the Corporation written notice of any event that would effect a change in control of the participant or could have a material impact on such participant's business and/or financial condition, including but not limited to:

- (i) material changes in ownership, control or management;
- (ii) material changes in business lines, including but not limited to new business lines undertaken; or
- (iii) participation as a defendant in litigation which could reasonably be anticipated to have a direct negative impact on the participant's financial condition or ability to conduct business.

With respect to an event (such as a merger or a planned change in business) for which the participant has advance knowledge, written notification must be received by the Corporation as soon as practicable upon the participant's having knowledge that such event is scheduled to occur and, with respect to an event for which the participant does not have advance knowledge thereof, such written notification must be received by the Corporation as soon as practicable after such event has occurred.

(c) Beginning on the FATCA Compliance Date, each FFI Member shall inform the Corporation, both orally and in writing, if it (i) undergoes a change in circumstance that would affect its FATCA Certification or (ii) otherwise has reason to know that it is not, or will not be, FATCA Compliant, in each case, within two days of knowledge thereof.

(d) Notice provided to the Corporation pursuant to this Section shall be provided in the form and to the persons or departments specified by the Corporation from time to time and the provisions of Rule 45 shall not apply thereto.

(e) Failure to notify the Corporation under this Section may be deemed to be a violation of the Corporation's Rules and therefore may be subject to sanctions.

### SEC. 3. OPERATIONAL TESTING

**(a)** The Corporation may, from time to time, determine those Members, Fund Members, Insurance Carrier/Retirement Services Members, Municipal Comparison Only Members, Mutual Fund/Insurance Services Members, Data Services Only Members, Settling Bank Only Members, Investment Manager/Agent Members, AIP Members, AIP Settling Bank Only Members, Third Party Provider Members and Third Party Administrator Members (collectively, "participants") who shall be required to fulfill, within the time frames established by the Corporation, certain operational testing requirements (the scope of such testing to be determined by the Corporation in its sole discretion) and related reporting requirements (such as reporting the test results to the Corporation in a manner specified by the Corporation) that may be imposed by the Corporation to ensure the continuing operational capability of the participant. The Corporation may assess a fine upon those participants that fail to fulfill any such operational testing and related reporting requirements within the time frames established by the Corporation.

**(b) The Corporation has established standards for designating those participants who shall be required to participate in annual business continuity and disaster recovery testing that the Corporation reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event that business continuity and disaster recovery plans are required to be activated. The standards shall take into account factors such as: (1) activity-based thresholds; (2) significant operational issues of the participant during the twelve months prior to the designation; and (3) past performance of the participant with respect to operational testing. The specific standards adopted by the Corporation and any updates or modifications thereto shall be published to participants and applied on a prospective basis.**

**Upon notification that the participant has been designated to participate in the annual business continuity and disaster recovery testing, as described above, participants shall be required to fulfill, within the timeframes established by the Corporation, certain testing requirements (the scope of such testing to be determined by the Corporation in its sole discretion) and related reporting requirements (such as reporting the test results to the Corporation in a manner specified by the Corporation) that may be imposed by the Corporation.**

### SEC. 4. ONGOING MONITORING (SURVEILLANCE STATUS)

Based upon criteria as established by the Corporation from time to time (e.g. the "credit risk matrix"), a Member whose financial and/or operational condition has been determined to be such that it may increase, or potentially increase, operational and/or

financial risk to the Corporation and/or its participants, may be placed on the corporation's "watch list". Members included on the watch list are subject to closer monitoring by the Corporation, and the Corporation may take such actions with regard to such Member as permitted within these rules and procedures.

Unless the context otherwise requires, the parent bank holding company of a Member that has been admitted to membership in accordance with section 1.B.2.(a)(ii) of Addendum B, and any material banking subsidiary of such parent bank holding company, shall, for the purpose of applying the surveillance status rules, be treated as if it were also a Member, so that the Member, the parent bank holding company, and any affiliated material banking subsidiary shall be required individually to meet the standards for a Member not under surveillance, if the Member is not to be placed on surveillance status.

#### SEC. 5. VOLUNTARY RETIREMENT

A Member, Fund Member, Insurance Carrier/Retirement Services Member, Municipal Comparison Only Member, Mutual Fund/Insurance Services Member, Data Services Only Member, Investment Manager/Agent Member, AIP Member, Third Party Provider Member or Third Party Administrator Member each may elect to voluntarily retire such membership by providing the Corporation with written notice of such termination. Such termination will not be effective until accepted by the Corporation. The Corporation's acceptance shall be evidenced by a notice to the Corporation's participants announcing the participant's retirement and the effective date of the retirement (the "Retirement Date"). A participant's voluntary termination of membership shall not affect its obligations to the Corporation, or the rights of the Corporation, with respect to transactions submitted to the Corporation before the Retirement Date (including, but not limited to, any pro-rata charge made by the Corporation pursuant to Section 8 of Rule 4).

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