

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88146; File No. SR-NSCC-2019-802)

February 7, 2020

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of No Objection to Advance Notice to Issue Term Debt as Part of its Liquidity Risk Management Framework

On December 13, 2019, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) advance notice SR-NSCC-2019-802 (“Advance Notice”) pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)<sup>1</sup> and Rule 19b-4(n)(1)(i)<sup>2</sup> under the Securities Exchange Act of 1934 (“Exchange Act”)<sup>3</sup> to issue term debt as part of its Clearing Agency Liquidity Risk Management Framework (“Framework”). The Advance Notice was published for public comment in the Federal Register on January 14, 2020,<sup>4</sup> and the Commission has received no comments regarding the changes proposed in the Advance Notice. This publication serves as notice of no objection to the Advance Notice.

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<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> 15 U.S.C. 78a et seq.

<sup>4</sup> Securities Exchange Act Release No. 34-87912 (January 8, 2020), 85 Fed. Reg. 2187 (January 14, 2020) (File No. SR-NSCC-2019-802) (“Notice of Filing”).

## **I. THE ADVANCE NOTICE**

NSCC has proposed to raise cash through the periodic issuance and private placement of term debt to qualified institutional investors in an aggregate amount not to exceed \$10 billion, as described in greater detail below. The cash from the term debt issuances would supplement NSCC's existing default liquidity resources, which collectively provide NSCC with liquidity to complete end-of-day settlement in the event of the default of an NSCC Member.<sup>5</sup> Such liquidity resources currently include the proceeds from the issuance and private placement of short-term, unsecured notes in the form of commercial paper and extendable notes<sup>6</sup> and cash that would be obtained by drawing upon NSCC's committed 364-day credit facility with a consortium of banks.<sup>7</sup>

### **A. General Terms of the Term Debt Issuances**

NSCC expects the average maturity of the term debt would range between two and ten years. The term debt would be represented by unsecured, unsubordinated and

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<sup>5</sup> Terms not defined herein are defined in NSCC's Rules and Procedures ("Rules"), available at [http://www.dtcc.com/~media/Files/Downloads/legal/rules/nscc\\_rules.pdf](http://www.dtcc.com/~media/Files/Downloads/legal/rules/nscc_rules.pdf). The events that constitute a Member default are specified in NSCC's Rule 46 (Restrictions on Access to Services), which provides that NSCC's Board of Directors may suspend a Member or prohibit or limit a Member's access to NSCC's services in enumerated circumstances, which include, for example, default in delivering funds or securities to NSCC or experiencing such financial or operational difficulties for which NSCC determines, in its discretion, that restriction on access to services is necessary for its protection and for the protection of its Members.

<sup>6</sup> See Securities Exchange Act Release Nos. 75730 (August 19, 2015), 80 Fed. Reg. 51638 (August 25, 2015) (File No. SR-NSCC-2015-802); 82676 (February 9, 2018), 83 Fed. Reg. 6912 (February 15, 2018) (File No. SR-NSCC-2017-807).

<sup>7</sup> See Securities Exchange Act Release No. 80605 (May 5, 2017), 82 Fed. Reg. 21850 (May 10, 2017) (File Nos. SR-DTC-2017-802; SR-NSCC-2017-802).

non-convertible medium-term and long-term global notes held in the name of The Depository Trust Company (“DTC”), or its nominee, Cede & Co.<sup>8</sup> The notes would be issued and transferred only through the book-entry system of DTC.

The term debt would be issued to qualified institutional investors through private placements and offered in reliance on an exemption from registration under Section 4(a)(2) of the Securities Act of 1933.<sup>9</sup> NSCC would be party to certain transaction documents in connection with each issuance and private placement, including an indenture with the trustee and purchase agreements.<sup>10</sup> The purchase agreements would each be based on the standard form of dealer agreement for similar debt issuances, which is published by the Securities Industry and Financial Markets Association.

NSCC intends to time each debt issuance and stagger maturity dates of each issuance in order to ladder the maturities to avoid concentrations of maturities. NSCC also would have the ability to make use of optional features to call any of the issued term debt, in whole or in part, at any time prior to the maturity date of that debt, and the issued term debt may contain renewable terms. The term debt would be interest bearing at either fixed or floating interest rates that are set at market rates customary for such type of debt and reflective of the creditworthiness of NSCC.

Under the proposal, NSCC would be authorized to issue an aggregate amount of up to \$10 billion in term debt and has represented that it expects the average amount

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<sup>8</sup> Supra note 4, at 5.

<sup>9</sup> 15 U.S.C. 77d(a)(2).

<sup>10</sup> NSCC states that it will engage a trustee and underwriting banks to issue the term debt to qualified institutional investors. Supra note 4, at 4.

issued and outstanding at any time to be approximately \$2-3 billion, as necessitated by its default liquidity needs.<sup>11</sup> NSCC estimates that each issuance would be in an amount between approximately \$250 million and \$1.5 billion, with an initial issuance expected to be approximately \$1 billion.

NSCC has stated that, in accordance with its Clearing Agency Investment Policy, NSCC would hold the proceeds from the issuance of term debt in either its cash deposit account at the Federal Reserve Bank of New York (“FRBNY”) or in accounts at other creditworthy financial institutions.<sup>12</sup> These amounts would be available to draw to complete settlement as needed.

#### **B. NSCC’s Liquidity Risk Management**

As a central counterparty (“CCP”),<sup>13</sup> NSCC occupies an important role in the securities settlement system by interposing itself between counterparties to financial transactions, becoming the buyer to each seller and seller to each buyer to ensure the

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<sup>11</sup> Supra note 4, at 4.

<sup>12</sup> See Securities Exchange Act Release Nos. 79528 (December 12, 2016), 81 Fed. Reg. 91232 (December 16, 2016) (File Nos. SR-DTC-2016-007, SR-FICC-2016-005, SR-NSCC-2016-003); 84949 (December 21, 2018), 83 Fed. Reg. 67779 (December 31, 2018) (File Nos. SR-DTC-2018-012, SR-FICC-2018-014, SR-NSCC-2018-013) (approving the Clearing Agency Investment Policy). NSCC has stated that, in the event that the Commission does not object to the Advance Notice, and NSCC then has the authority to issue the term debt, NSCC will file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Exchange Act, and the rules thereunder, to amend the Clearing Agency Investment Policy to include the proceeds of the debt issuance as default liquidity funds, within the definition of “Investable Funds,” as such term is defined therein, and provide that such amounts would be held in bank deposits at eligible commercial banks or at NSCC’s cash deposit account at the FRBNY. See 15 U.S.C. 78s(b)(1).

<sup>13</sup> 17 CFR 240.17Ad-22(a)(1).

performance of contract, thereby reducing the risk faced by its Members and contributing to global financial stability. NSCC's liquidity risk management plays an integral part in NSCC's ability to perform its role as a CCP. If a Member defaults, NSCC, as CCP, would need to complete settlement of guaranteed transactions on the failing Member's behalf from the date of default through the remainder of the settlement cycle (currently two days for securities that settle on a regular way basis in the U.S. markets).

NSCC's Framework sets forth NSCC's liquidity risk management strategy to maintain sufficient liquidity resources in order to meet the potential funding required to settle outstanding transactions of a defaulting Member in a timely manner.<sup>14</sup> The Framework also addresses how NSCC meets its requirement to hold qualifying liquid resources, as such term is defined in Rule 17Ad-22(a)(14) under the Act,<sup>15</sup> sufficient to meet its minimum liquidity resource requirement in each relevant currency for which it has payment obligations owed to its Members.

NSCC considers each of its existing default liquidity resources to be qualifying liquid resources.<sup>16</sup> These resources include: (1) the cash in NSCC's Clearing Fund;<sup>17</sup> (2) cash that would be obtained by drawing upon NSCC's committed 364-day credit facility

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<sup>14</sup> See Securities Exchange Act Release No. 82377 (December 21, 2017), 82 Fed. Reg. 61617 (December 28, 2017) (File Nos. SR-DTC-2017-004; SR-FICC-2017-008; SR-NSCC-2017-005).

<sup>15</sup> 17 CFR 240.17Ad-22(a)(14).

<sup>16</sup> Id.

<sup>17</sup> See Rule 4 and Procedure XV of the Rules, supra note 14.

with a consortium of banks;<sup>18</sup> (3) additional cash deposits, known as “Supplemental Liquidity Deposits,” designed to cover the heightened liquidity exposure arising around monthly option expiry periods, required from those Members whose activity would pose the largest liquidity exposure to NSCC;<sup>19</sup> and (4) cash proceeds from the issuance and private placement of short-term, unsecured notes in the form of commercial paper and extendable notes (“Commercial Paper Program”).<sup>20</sup>

The proceeds from the term debt issuances would supplement NSCC’s existing default liquidity resources and provide NSCC with an additional resource it may use to meet its liquidity needs, as measured pursuant to the Framework.<sup>21</sup> Further, NSCC would consider the proceeds from the term debt issuances to be a qualifying liquid resource under the Framework.<sup>22</sup>

## II. DISCUSSION AND COMMISSION FINDINGS

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: to

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<sup>18</sup> See Securities Exchange Act Release No. 80605 (May 5, 2017), 82 Fed. Reg. 21850 (May 10, 2017) (File Nos. SR-DTC-2017-802; SR-NSCC-2017-802).

<sup>19</sup> Supplemental Liquidity Deposits are described in Rule 4A of the Rules.

<sup>20</sup> See Securities Exchange Act Release Nos. 75730 (August 19, 2015), 80 Fed. Reg. 51638 (August 25, 2015) (File No. SR-NSCC-2015-802); 82676 (February 9, 2018), 83 Fed. Reg. 6912 (February 15, 2018) (File No. SR-NSCC-2017-807).

<sup>21</sup> Supra note 14. NSCC will file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Exchange Act, and the rules thereunder, to amend the Framework to include the proceeds of the debt issuance as an additional qualifying liquidity resource of NSCC. See supra note 12; 15 U.S.C. 78s(b)(1).

<sup>22</sup> Supra note 4, at 7.

mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.<sup>23</sup>

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.<sup>24</sup> Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):<sup>25</sup>

- to promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among others areas.<sup>26</sup>

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the "Clearing

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<sup>23</sup> See 12 U.S.C. 5461(b).

<sup>24</sup> 12 U.S.C. 5464(a)(2).

<sup>25</sup> 12 U.S.C. 5464(b).

<sup>26</sup> 12 U.S.C. 5464(c).

Agency Rules”).<sup>27</sup> The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.<sup>28</sup> As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the proposal in the Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,<sup>29</sup> and in the Clearing Agency Rules, in particular Rule 17Ad-22(e)(7).<sup>30</sup>

**A. Consistency with Section 805(b) of the Clearing Supervision Act**

For the reasons discussed immediately below, the Commission believes that the Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act.<sup>31</sup>

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<sup>27</sup> 17 CFR 240.17Ad-22. See Securities Exchange Act Release No. 68080 (October 22, 2012), 77 Fed. Reg. 66220 (November 2, 2012) (S7-08-11). See also Securities Exchange Act Release No. 78961 (September 28, 2016), 81 Fed. Reg. 70786 (October 13, 2016) (S7-03-14) (“Covered Clearing Agency Standards”). The Commission established an effective date of December 12, 2016 and a compliance date of April 11, 2017 for the Covered Clearing Agency Standards. NSCC is a “covered clearing agency” as defined in Rule 17Ad-22(a)(5).

<sup>28</sup> Id.

<sup>29</sup> Supra note 25.

<sup>30</sup> 17 CFR 240.17Ad-22(e)(7).

<sup>31</sup> Supra note 25.



NSCC's issuance of term debt would provide it with an additional liquid resource that NSCC could access in the event of a Member default, supplementing NSCC's existing default liquidity resources and diversifying the type and source of such resources. The Commission believes that the proposal to issue term debt up to an aggregate amount of \$10 billion, and use the proceeds as a default liquidity resource, is designed to promote robust liquidity risk management at NSCC by diversifying the set of liquid resources available to NSCC in the event of a Member default that, in turn, would allow NSCC to continue to meet its settlement obligations to its Members in a timely fashion. While the Commission notes that the proposed issuance of term debt could bring certain financial risks,<sup>32</sup> the Commission believes that in the event such risks were to materialize, the ability of NSCC to use other liquidity tools<sup>33</sup> helps promote NSCC's ability to manage liquidity risk through an overall diversified range of risk management tools.

The Commission also believes that the term debt issuance, as proposed and in light of NSCC's current finances and its approach to financial risk management, would promote safety and soundness by enabling NSCC to obtain additional and diversified liquid resources to cover a liquidity gap that could arise in the event of a Member default. By

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<sup>32</sup> The risks include maturity risk, rollover risk, interest rate risk, and financial risk. Supra note 4, at 9-10.

<sup>33</sup> NSCC's other liquidity tools include: (1) NSCC's Clearing Fund (consisting of cash and U.S. Treasury securities); (2) NSCC's committed 364-day credit facility with a consortium of banks; (3) Supplemental Liquidity Deposits, which are cash deposits designed to cover the heightened liquidity exposure arising around monthly option expiry periods by Members whose activity would pose the largest liquidity exposure to NSCC during such periods; and (4) cash proceeds from the issuance and private placement of short-term, unsecured notes as part of NSCC's Commercial Paper Program. Supra note 4, at 7.

covering such a gap, the proposal complements NSCC's ability to meet its settlement obligations in the event of a Member default, thereby reducing the risk of loss contagion (i.e., the risk of losses arising at other NSCC Members if NSCC is unable to deliver cash or securities on the defaulting Member's behalf). Reducing the risk of loss contagion during a Member default, in turn, enhances the ability of NSCC and its Members to continue to provide stability and safety to the financial markets they serve. Therefore, by enhancing NSCC's ability to address losses and liquidity pressures that otherwise might cause financial distress to NSCC or its Members, the Advance Notice promotes safety and soundness.

The Commission also believes that NSCC's proposal is consistent with reducing systemic risks and supporting the stability of the broader financial system. Reducing the risk of loss contagion would attenuate the transmission of financial shocks from defaulting Members to non-defaulting Members. Accordingly, the proposal would support the stability of the broader financial system. Thus, the Commission believes that the proposal reflected in the Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act.

**B. Consistency with Rule 17Ad-22(e)(7)**

The Commission believes that the proposal described in the Advance Notice is consistent with the requirements of Rule 17Ad-22(e)(7) under the Exchange Act. Rule 17Ad-22(e)(7) requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by NSCC, including measuring, monitoring, and

managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity, as specified in the rule.

**1. Consistency with Rule 17Ad-22(e)(7)(i)**

In particular, Rule 17Ad-22(e)(7)(i) under the Exchange Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to “effectively measure, monitor, and manage the liquidity risk that arises in or is borne by [it], including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by ... [m]aintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day ... settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment of obligation for the covered clearing agency in extreme but plausible conditions.”

As described above, the proposed issuance of term debt would increase the readily-available liquidity resources available to NSCC to continue to meet its liquidity obligations in a timely fashion in the event of a Member default. The funds could help maintain sufficient liquidity resources to effect same-day settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios. Additionally, the term debt issuance is designed to help ensure that NSCC has sufficient, readily available qualifying liquid resources to meet the cash settlement obligations of its largest family of affiliated Members. Therefore, the Commission finds that the proposal is consistent with Rule 17Ad-22(e)(7)(i).

## 2. Consistency with Rule 17Ad-22(e)(7)(ii)

Rule 17Ad-22(e)(7)(ii) under the Exchange Act requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to “effectively measure, monitor, and manage the liquidity risk that arises in or is borne by [it], including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by . . . holding qualifying liquid resources sufficient” to satisfy payment obligations owed to clearing members. Rule 17Ad-22(a)(14) under the Exchange Act defines “qualifying liquid resources” to include, among other things, cash held either at the central bank of issue or at creditworthy commercial banks.

As described above, the proposed issuance of term debt would enable NSCC to hold additional cash proceeds from the issuance of the term debt in a cash deposit account at the Federal Reserve Bank of New York or a bank counterparty that has been approved pursuant to NSCC’s Clearing Agency Investment Policy. Because the funds would be held at the Federal Reserve Bank of New York or a bank counterparty, they would be a qualifying liquid resource, as that term is defined in Rule 17Ad-22(a)(14).<sup>34</sup> Therefore, the Commission believes that the proposal is consistent with Rule 17Ad-22(e)(7)(ii).

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<sup>34</sup> 17 CFR 240.17Ad-22(a)(14) (“Qualifying liquid resources means, for any covered clearing agency, . . . (i) cash held either at the central bank of issue or at creditworthy commercial banks . . .”).

### **III. CONCLUSION**

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission DOES NOT OBJECT to Advance Notice (SR-NSCC-2019-802) and that NSCC is AUTHORIZED to implement the proposed change as of the date of this notice.

By the Commission.

J. Matthew DeLesDernier  
Assistant Secretary