

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-89408; File No. SR-NSCC-2020-015)

July 28, 2020

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify Fees for the Subscription-Based Portfolio Composition File Reporting Service

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 21, 2020, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Addendum A (Fee Structure) of the NSCC Rules & Procedures (“Rules”)<sup>5</sup> with respect to fees for the subscription-based portfolio composition file reporting service as well as make other changes, as described in greater detail below.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> Capitalized terms not defined herein are defined in the Rules, available at [http://dtcc.com/~media/Files/Downloads/legal/rules/nsc\\_rules.pdf](http://dtcc.com/~media/Files/Downloads/legal/rules/nsc_rules.pdf).

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Addendum A (Fee Structure) of the Rules with respect to fees for the subscription-based portfolio composition file reporting service in order to better align fees with the costs of services provided by NSCC. Based on the current subscription volume, NSCC anticipates that the proposed rule change would increase NSCC's annual revenue from the portfolio composition file reporting service by approximately \$108,000. The proposed rule change would also make technical and conforming changes.

(i) **BACKGROUND**

NSCC provides an exchange-traded fund ("ETF") portfolio composition file reporting service whereby NSCC makes available to each subscribing Member reports which contain information on ETF portfolios that such Member requests. These reports are available as machine readable output files, as well as through a web-based interface from which Members may download and print reports. This reporting service is covered in Procedure II (Trade Comparison and Reporting Service), Section F, of the Rules.

Members are assessed fees in accordance with Addendum A (Fee Structure) of the Rules based on their activities and the services utilized. With respect to the ETF portfolio composition file reporting service, the current Fee Structure provides that each Member that subscribes to such service is charged a fee based on the number of portfolios subscribed by the Member on an average daily basis per billing month (referred to as “units” in the Fee Structure). Fees are calculated by applying a tiered fee structure to the average daily number of units subscribed by the Member in the billing month, subject to a maximum and a minimum monthly fee. The minimum monthly fee is designed to offset the costs to NSCC of providing this service to Members on an on-going basis while the maximum monthly fee is designed to cap subscribing Members’ fees for this service to enable such Members to benefit from the economies of scale that NSCC realizes as the number of units being reported increases.

Currently, Members are charged \$3.00 per unit per month for the first zero to 200 average daily units, \$2.00 per unit per month for the next 300 average daily units (201<sup>st</sup> to 500<sup>th</sup> units), \$1.00 per unit per month for all average daily units above 500 (501<sup>st</sup> and above), subject to a monthly minimum charge of \$600 and a monthly maximum charge of \$1,550. The current fees have not been changed for more than five years and are no longer aligned with NSCC’s costs of providing the ETF portfolio composition file reporting service.<sup>6</sup> As such, the revenue from these fees does not cover the costs of such service. Accordingly, the proposed changes would adjust fees for the subscription-based

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<sup>6</sup> NSCC made a number of enhancements to the ETF portfolio composition file reporting service during 2018 and 2019. These enhancements increased NSCC’s costs of providing the ETF portfolio composition file reporting service.

portfolio composition file reporting service so that revenue for NSCC would better align with the costs of providing such service.

(ii) **PROPOSED FEE CHANGES**

NSCC is proposing to modify the Fee Structure to better align fees for the subscription-based portfolio composition file reporting service with NSCC's costs of providing such service. Specifically, in Section V.B. of the Fee Structure, NSCC is proposing to increase the fees for the subscription-based portfolio composition file reporting service so that Members would be charged \$4.00 (instead of \$3.00) per unit per month for the first zero to 200 average daily units, \$3.00 (instead of \$2.00) per unit per month for the next 300 average daily units (201<sup>st</sup> to 500<sup>th</sup> units), \$2.00 (instead of \$1.00) per unit per month for all average daily units above 500 (501<sup>st</sup> and above), subject to a monthly minimum charge of \$800 (instead of \$600) and a monthly maximum charge of \$1,800 (instead of \$1,550). NSCC has not modified these fees since 2014.<sup>7</sup>

NSCC is also proposing technical and conforming changes. Specifically, NSCC is proposing to delete an outdated footnote from Section V.B. of the Fee Structure. Footnote 20 in Section V.B. of the Fee Structure refers to the minimum monthly charge being \$300 until December 31, 2015 and that it will increase to \$600 per month thereafter and footnote 20 will be deleted then; however, due to a technical oversight, footnote 20 has not yet been deleted. As such, NSCC is proposing a technical change to delete footnote 20 from Section V.B. of the Fee Structure, and a conforming change to renumber footnote 21 as footnote 20 in Section V.C. of the Fee Structure.

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<sup>7</sup> See Securities Exchange Act Release No. 72307 (June 4, 2014), 79 FR 33250 (June 10, 2014) (SR-NSCC-2014-06).

(iii) **IMPLEMENTATION TIMEFRAME**

NSCC would implement this proposal by September 1, 2020. As proposed, a legend would be added to the Fee Structure stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend also would include a date by which such changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would automatically be removed from the Fee Structure.

2. Statutory Basis

NSCC believes this proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, NSCC believes this proposal is consistent with Sections 17A(b)(3)(D)<sup>8</sup> and 17A(b)(3)(F)<sup>9</sup> of the Act and Rule 17Ad-22(e)(23)(ii),<sup>10</sup> as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(D) of the Act requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.<sup>11</sup> NSCC believes the proposed rule changes to the Fee Structure to better align pricing with costs of services would provide for the equitable allocation of reasonable fees. The proposed changes would increase the fees assessed for the subscription-based portfolio composition file reporting service in order to better align with the costs of providing such

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<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 17 CFR 240.17Ad-22(e)(23)(ii).

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(D).

service. NSCC believes the proposed changes to the fees are equitable because they would apply uniformly to all Members that utilize the services. NSCC believes the proposed changes are reasonable because they would be commensurate with the increased costs of resources allocated by NSCC in providing such services. Therefore, NSCC believes the proposed rule changes to the Fee Structure to better align pricing with costs of services are consistent with Section 17A(b)(3)(D) of the Act.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>12</sup> The proposed rule changes to make technical and conforming changes would help ensure that the Rules, including the Fee Structure, remain accurate and clear to Members. Having accurate and clear Rules would help Members to better understand their rights and obligations regarding NSCC's clearance and settlement services. NSCC believes that when Members better understand their rights and obligations regarding NSCC's clearance and settlement services, they can act in accordance with the Rules. NSCC believes that better enabling Members to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by NSCC. As such, NSCC believes the proposed rule changes to make technical and conforming changes are consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad-22(e)(23)(ii) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and

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<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

other material costs they incur by participating in the covered clearing agency.<sup>13</sup> NSCC believes that the proposed rule changes to make technical and conforming changes would help ensure that the Fee Structure is transparent and clear to Members. Having a transparent and clear Fee Structure would help Members, NSCC believes, to better understand NSCC's fees and help provide Members with increased predictability and certainty regarding the fees they incur by participating in NSCC. As such, NSCC believes the proposed rule changes to make technical and conforming changes are consistent with Rule 17Ad-22(e)(23)(ii) under the Act.

(B) Clearing Agency's Statement on Burden on Competition

NSCC believes the proposed rule changes to increase the fees for the subscription-based portfolio composition file reporting service may have an impact on competition, because these changes would likely increase the fees of those Members that utilize such service when compared to their fees under the current Fee Structure. NSCC believes these proposed rule changes could burden competition by negatively affecting such Members' operating costs. While these Members may experience increases in their fees when compared to their fees under the current Fee Structure, NSCC does not believe such change in fees would in and of itself mean that the burden on competition is significant. This is because even though the amount of the fee increase may seem significant in some instances (e.g., going from \$1 to \$2 per unit per month for all average daily units above 500), NSCC believes the increase in fees would similarly affect all Members that utilize the subscription-based portfolio composition file reporting service, and therefore the burden on competition would not be significant.

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<sup>13</sup> 17 CFR 240.17Ad-22(e)(23)(ii).

Regardless of whether the burden on competition is deemed significant, NSCC believes any burden on competition that is created by these proposed rule changes would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>14</sup>

The proposed rule changes to increase the fees for the subscription-based portfolio composition file reporting service would be necessary in furtherance of the purposes of the Act, because the Rules must provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.<sup>15</sup> As described above, NSCC believes that the proposed rule changes would result in fees that are equitably allocated (by applying uniformly to all Members that use the applicable service) and would result in reasonable fees (by better aligning with the costs of the service). As such, NSCC believes these proposed rule changes would be necessary in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>16</sup>

NSCC believes any burden on competition that is created by the proposed rule changes to increase the fees for the subscription-based portfolio composition file reporting service would also be appropriate in furtherance of the purposes of the Act. The proposed rule changes would allow NSCC to assess fees that are better aligned with its costs of providing the service. Having the ability to assess fees that are better aligned with NSCC's costs of providing the services would help NSCC to continue providing dependable and stable clearance and settlement services to its Members. As such, NSCC

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<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>15</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(I).



believes these proposed rule changes would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>17</sup>

NSCC does not believe the proposed rule changes to make technical and conforming changes would impact competition.<sup>18</sup> These changes would apply equally to all Members and would not affect Members' rights and obligations. As such, NSCC believes these proposed rule changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to this proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>20</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f).

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2020-015 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-NSCC-2020-015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the

principal office of NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2020-015 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).