

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-93722; File No. SR-NSCC-2021-015)

December 6, 2021

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Remove Mutual Fund Deposit Requirements and Remove Certain Other Provisions Relating to Clearing Fund Requirements for Limited Members from the NSCC Rules

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 December 2, 2021, 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)<sup>3</sup> of the Act and subparagraph (f)(4)<sup>4</sup> of Rule 19b-4 thereunder. 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

(a) The proposed rule change of National Securities Clearing Corporation (“NSCC”) is annexed hereto as Exhibit 5 and consists of modifications to NSCC’s Rules & Procedures (the “Rules”)<sup>5</sup> to remove the requirement that Members and Mutual

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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)(4).

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

Fund/Insurance Services Members pay a Mutual Fund Deposit into the Clearing Fund relating to Mutual Fund Services, remove provisions relating to the Mutual Fund Deposit and the Insurance Deposit and remove a provision relating to establishing a Clearing Fund requirement for NSCC Members<sup>6</sup> that currently do not have a Clearing Fund requirement. The proposed changes are described in greater detail below.

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 proposed rule change consists of modifications the Rules to remove the requirement that Members and Mutual Fund/Insurance Services Members pay a Mutual Fund Deposit into the Clearing Fund relating to Mutual Fund Services, remove provisions relating to the Mutual Fund Deposit and the Insurance Deposit and remove a provision relating to establishing a Clearing Fund requirement for NSCC Members that

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<sup>6</sup> Members and Limited Members are collectively referred to herein as "NSCC Members".

currently do not have a Clearing Fund requirement. The proposed changes are described in greater detail below.

(i) ***Mutual Fund Deposit***

As part of its market risk management strategy, NSCC manages its credit exposure to NSCC Members by determining the appropriate deposits to the Clearing Fund and monitoring Clearing Fund's sufficiency, as provided for in the Rules.<sup>7</sup> The deposits to the Clearing Fund serves as each NSCC Member's margin. The objective of an NSCC Member's deposit is to mitigate potential losses to NSCC associated with a default by an NSCC Member. Pursuant to the Rules, each NSCC Member's Clearing Fund deposit amount consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV.<sup>8</sup> One of the required components is a "Mutual Fund Deposit" that is required to be paid by Mutual Fund/Insurance Services Members and Members that use Mutual Fund Services and which is intended to address risks relating to the use of Mutual Fund Services.<sup>9</sup>

Section 13 of Rule 4 requires that Mutual Fund/Insurance Services Members and Members that use Mutual Fund Services each make a cash deposit to the Clearing Fund, referred to as a Mutual Fund Deposit, in the amounts determined in Procedure XV.<sup>10</sup>

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<sup>7</sup> See Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) ("Procedure XV"), supra note 5. NSCC's market risk management strategy is designed to comply with Rule 17Ad-22(e)(4) under the Act, where these risks are referred to as "credit risks." 17 CFR 240.17Ad-22(e)(4).

<sup>8</sup> Procedure XV, supra note 5.

<sup>9</sup> See Section 13 of Rule 4, supra note 5.

<sup>10</sup> Id.

Section I.(A)(4) of Procedure XV requires that each Member that uses Mutual Fund Services pay a Mutual Fund Deposit ranging from \$5,000 to \$20,000 based on the amount of Mutual Fund Services settlement debits such Member has with respect to any one Fund Member.<sup>11</sup> Section I.(C) of Procedure XV requires that each Mutual Fund/Insurance Services Member also pay a Mutual Fund Deposit ranging from \$5,000 to \$20,000 based on the amount of Mutual Fund Services settlement debits such Mutual Fund/Insurance Services Member has with respect to any one Fund Member.<sup>12</sup>

The risk that the Mutual Fund Deposit is intended to address is a loss incurred by NSCC relating to a default by a Member or Mutual Fund/Insurance Services Member using Mutual Fund Services. Mutual Fund Services is a “non-guaranteed” service of NSCC, which means that NSCC does not guarantee the payments at settlement for transactions processed through Mutual Fund Services.<sup>13</sup> In the event of an NSCC Member default, transactions processed through Mutual Fund Services by that NSCC Member may be reversed, including any credits owed to any counterparties with respect to such transactions.<sup>14</sup> Therefore, a loss to NSCC could only occur with respect to transactions in Mutual Fund Services if an NSCC Member defaults on payment, NSCC makes a decision to proceed with settlement despite the default and pay the credits to the counterparties and then subsequently NSCC is unable to recover the funds from either the defaulting NSCC Member or the counterparties. Such a situation is referred to as a

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<sup>11</sup> Section I.(A)(4) of Procedure XV, supra note 5.

<sup>12</sup> Section I.(C) of Procedure XV, supra note 5.

<sup>13</sup> See Addendum D of the Rules, supra note 5.

<sup>14</sup> Id.

“double default”. NSCC put the Mutual Fund Deposit requirement in place to address the remote risk of loss related to a double default in connection with Mutual Fund Services transactions.<sup>15</sup>

NSCC regularly assesses its margining methodologies to evaluate whether margin levels are commensurate with the particular risk attributes of each relevant product, portfolio, and market. In connection with such reviews, NSCC has determined that the Mutual Fund Deposit is not necessary to address the risks relating to transactions in Mutual Fund Services by Members and Mutual Fund/Insurance Services Members. The risk of an NSCC loss relating to Mutual Fund Services transactions is remote. As discussed above, upon a default by a Member or a Mutual Fund/Insurance Services Member related to Mutual Fund Services transactions, for NSCC to incur a loss, NSCC would need to make a decision to not reverse the Mutual Fund Services transactions and pay the credits to the counterparties. While it is possible that NSCC could make such a decision, for instance in order to minimize operational risks and market impacts, it would likely only do so if it was certain that it could recover the amounts of the credits it decided to pay. In addition, since those payments can be reversed, once those payments were made, NSCC could look to both the defaulting NSCC Member and the counterparties that received the credit payments to recover those losses. NSCC has never needed to use Mutual Fund Deposits to recover a loss and has never incurred a loss relating to an NSCC Member defaulting on Mutual Fund Services transaction payments.

In addition, the amounts of the Mutual Fund Deposits no longer correlate with

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<sup>15</sup> See Securities Exchange Release No. 26377 (December 20, 1988) (SR-NSCC-87-12), 53 FR 52546 (December 28, 1988).

most of the settlement amounts in Mutual Fund Services. The current requirements for the Mutual Fund Deposits, from \$5,000 to \$20,000, has not changed since the Mutual Fund Deposit was implemented in 1988.<sup>16</sup> In the remote circumstance where NSCC did incur a loss relating to Mutual Fund Services, the amounts of the Mutual Fund Deposits would not likely cover the amount of such losses.

Therefore, NSCC is proposing to remove the requirement that Members that use Mutual Fund Services and Mutual Fund/Insurance Services Members pay the Mutual Fund Deposit.

**(ii) *Mutual Fund Deposit/Insurance Deposit Provisions***

In addition to the provisions requiring Members and Mutual Fund/Insurance Services to pay a Mutual Fund Deposit, Section 13 of Rule 4 contains provisions stating that Fund Members *may* be required to make a Mutual Fund Deposit in accordance with Procedure XV and other applicable Rules and Procedures.<sup>17</sup> Section 14 of Rule 4 has a similar provision stating that Insurance Participants *may* be required to pay an Insurance Deposit in accordance with Procedure XV and other applicable Rules and Procedures.<sup>18</sup>

Section 13 of Rule 4 and Section 14 of Rule 4 also contain other provisions relating to the use of the Mutual Fund Deposits and Insurance Deposits, including loss allocation provisions relating to the Mutual Fund Deposits and Insurance Deposits and provisions relating to the return of the Mutual Fund Deposit or Insurance Deposit to a

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<sup>16</sup> Id.

<sup>17</sup> Section 13 of Rule 4, supra note 5.

<sup>18</sup> Section 14 of Rule 4, supra note 5.

Mutual Fund Participant or Insurance Participant, respectively, that withdraws from membership.

NSCC has never placed a requirement in Procedure XV for Fund Members to pay a Mutual Fund Deposit or for Insurance Participants to pay an Insurance Deposit.

Section I.(D) of Procedure XV states that the Clearing Fund Formula for each Fund Member, Insurance Carrier/Retirement Services Member and those Mutual Fund/Insurance Services Members who use Insurance & Retirement Services shall be established at such time as NSCC deems appropriate, however, NSCC has never established a Clearing Fund Formula for such NSCC Members.<sup>19</sup> In addition, NSCC currently does not plan to establish a Clearing Fund Formula for such NSCC Members.

NSCC believes that the provisions relating to whether it may require an NSCC Member to pay a Mutual Fund Deposit or Insurance Deposit and that it shall establish a Clearing Fund Formula for Fund Members, Insurance Carrier/Retirement Services Members and Mutual Fund/Insurance Services Members who use Insurance & Retirement Services are unnecessary and may be misleading since NSCC currently has no plans to establish such requirements. Given that NSCC would no longer be requiring Members and Mutual Fund/Insurance Services Members to pay a Mutual Fund Deposit and to avoid confusion relating to whether any other NSCC Members would be required to pay a Mutual Fund Deposit or an Insurance Deposit, NSCC is proposing to delete the provisions relating to Mutual Fund Deposits, Insurance Deposits and statements relating to whether NSCC shall establish a Clearing Fund Formula for Fund Members, Insurance

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<sup>19</sup> See Section I.(D) of Procedure XV, supra note 5.

Carrier/Retirement Services Members and Mutual Fund/Insurance Services Members who use Insurance & Retirement Services.

**(ii) *Proposed Rule Changes***

NSCC is proposing to delete the definitions of Insurance Deposit and Mutual Fund Deposit in Rule 1 and delete Sections 13 and 14 of Rule 4 to remove the provisions relating to Mutual Fund Deposits and Insurance Deposits. NSCC is also proposing to delete Section I.(A)(4) of Procedure XV to remove the requirement that Members that use Mutual Fund Services pay a Mutual Fund Deposit and delete Section I.(C) of Procedure XV to remove the requirement that Mutual Fund/Insurance Services Members pay a Mutual Fund Deposit. NSCC would also delete Section I.(D) of Procedure XV to remove the statement that NSCC shall establish a Clearing Fund Formula for Fund Members, Insurance Carrier/Retirement Services Members and those Mutual Fund/Insurance Services Members who use Insurance & Retirement Services.

**(iii) *Implementation***

NSCC expects to implement the proposed rule changes on or prior to January 31, 2022. As proposed, a legend would be added to Rule 1, Rule 4 and Procedure XV stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legends would also state the date by which such changes would be implemented, the file number of this proposal, that NSCC will issue an Important Notice when the changes are implemented, and would state that once this proposal is implemented the legend would automatically be removed.

**2. Statutory Basis**

NSCC believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In



particular, NSCC believes that the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act<sup>20</sup> and Rule 17Ad22(e)(6)(i) under the Act.

Section 17A(b)(3)(F) of the Act<sup>21</sup> requires, in part, that the Rules be designed to, among other things, remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The proposed revisions are consistent with this provision because the proposed revisions would remove a requirement to pay the Mutual Fund Deposit that NSCC has determined is not necessary to mitigate potential losses to NSCC associated with a default by an NSCC Member related to transactions in Mutual Fund Services. Removing the requirement of the Mutual Fund Deposits would allow Members and Mutual Fund/Insurance Services Members to use Mutual Fund Services without having to incur costs associated with making a Mutual Fund Deposit.

In addition, removing the references to the Mutual Fund Deposit and the Insurance Deposit and the references to establishing a Clearing Fund Formula for Fund Members, Insurance Carrier/Retirement Services Members and Mutual Fund/Insurance Services Members who use Insurance & Retirement Services would enhance the clarity of the Rules by removing provisions that are unnecessary and potentially misleading. Having clear and accurate Rules would help NSCC Members to better understand their rights and obligations regarding NSCC's services.

As such, NSCC believes the proposed rule changes are consistent with Section

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<sup>20</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>21</sup> Id.

17A(b)(3)(F) of the Act.<sup>22</sup>

Rule 17Ad-22(e)(6)(i) under the Act<sup>23</sup> requires that 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.<sup>24</sup> NSCC has determined that the Mutual Fund Deposit is not necessary to address the risks relating to transactions in Mutual Fund Services by Members and Mutual Fund/Insurance Services Members. NSCC has never incurred a loss resulting from a default by an NSCC Member relating to transactions in Mutual Fund Services. In addition, for the reasons discussed above, the risk of NSCC occurring such a loss is remote and the amounts of the Mutual Fund Deposits are likely not sufficient to cover any such loss if such an unlikely event were to occur. Therefore, NSCC believes the proposed change is consistent with Rule 17Ad-22(e)(6)(i) under the Act.<sup>25</sup>

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

NSCC does not believe that the proposed changes would have an adverse impact, or impose a burden, on competition. These proposed changes would remove a requirement to pay the Mutual Fund Deposit for Mutual Fund/Insurance Services Members and Members that use Mutual Fund Services and would be removing

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<sup>22</sup> Id.

<sup>23</sup> 17 CFR 240.17Ad-22(e)(6)(i).

<sup>24</sup> Id.

<sup>25</sup> 17 CFR 240.17Ad-22(e)(6)(iii).

provisions relating to the Mutual Fund Deposit and Insurance Deposit and clearing fund that NSCC believes are not necessary. The proposed changes would not be adding any obligations on NSCC Members that are using NSCC's services. As such, the proposed changes would not impede any NSCC Members from engaging in the services or have an adverse impact on any NSCC Members. Moreover, the proposed changes may promote competition because the proposed changes could enhance participation in Mutual Fund Services by removing the obligation to pay a Mutual Fund Deposit.

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

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at [tradingandmarkets@sec.gov](mailto:tradingandmarkets@sec.gov) or 202-551-5777.

NSCC reserves the right not to respond to any comments received.

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)<sup>26</sup> of the Act and paragraph (f)<sup>27</sup> of Rule 19b-4 thereunder. 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

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-2021-015 on the subject line.

Paper Comments:

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

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<sup>26</sup> 15 U.S.C 78s(b)(3)(A).

<sup>27</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-NSCC-2021-015. 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 (<https://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NSCC-2021-015 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>28</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>28</sup> 17 CFR 200.30-3(a)(12).