

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-95026; File No. SR-NSCC-2022-005)

June 2, 2022

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, to Revise the Excess Capital Premium Charge

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 May 30, 2022, 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. On June 1, 2022, NSCC filed Amendment No. 1 to the proposed rule change, to make a correction to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

The proposed rule change consists of modifications to Procedure XV (Clearing Fund Formula and Other Matters) of NSCC’s Rules & Procedures (“Rules”)<sup>4</sup> to revise the Excess Capital Premium (“ECP”) charge by enhancing the methodology for calculating the charge to (1) compare a Member’s applicable capital amounts with the

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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> Amendment No. 1 made a correction to the Exhibit 5 of the filing, specifically, to insert an additional cross-reference into a proposed definition that had been omitted.

<sup>4</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).

amount it contributes to the Clearing Fund that represents its volatility charge, (2) for Members that are broker-dealers, use net capital amounts rather than excess net capital amounts in the calculation of the ECP charge; and for all other Members, use equity capital in the calculation of the ECP charge, and (3) establish a cap of 2.0 for the Excess Capital Ratio (as defined below) that is used in calculating a Member's ECP charge.

The proposed changes would also improve the transparency of the Rules regarding the ECP charge by (1) clarifying the capital amounts that are used in the calculation of the charge by introducing new defined terms, (2) removing NSCC's discretion to waive or reduce the charge, and (3) providing that NSCC may calculate the charge based on updated capital information, as 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

NSCC is proposing to modify the ECP charge, which is a component of its Clearing Fund that NSCC may impose on a Member when a portion of that Member's Required Fund Deposit (defined in the Rules as the "Calculated Amount") exceeds its applicable capital amounts by 1.0 (defined in the Rules as the "Excess Capital Ratio"), as

described in greater detail below.<sup>5</sup> The proposed changes would revise the ECP charge by enhancing the methodology for calculating the charge to (1) compare a Member's applicable capital amounts with the amount it contributes to the Clearing Fund that represents its volatility charge, (2) for Members that are broker-dealers, use net capital amounts rather than excess net capital amounts in the calculation of the ECP charge; and for all other Members, use equity capital in the calculation of the ECP charge, and (3) establish a cap of 2.0 for the Excess Capital Ratio that is used in calculating a Member's ECP charge.

The proposed changes would also improve the transparency of the Rules regarding the ECP charge by (1) clarifying the capital amounts that are used in the calculation of the charge by introducing new defined terms, (2) removing NSCC's discretion to waive or reduce the charge, and (3) providing that NSCC may calculate the charge based on updated capital information, as described in greater detail below.

*(i) Overview of the Required Fund Deposit and NSCC's Clearing Fund*

As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Fund Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.<sup>6</sup> The Required Fund Deposit serves as each Member's margin.

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<sup>5</sup> See Section I(B)(2) of Procedure XV, *id.*

<sup>6</sup> See Rule 4 and Procedure XV, *supra* note 3. 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).

The objective of a Member's Required Fund Deposit is to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event NSCC ceases to act for that Member (hereinafter referred to as a "default").<sup>7</sup> The aggregate of all Members' Required Fund Deposits constitutes the Clearing Fund of NSCC. 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. Pursuant to the Rules, each Member's Required Fund Deposit consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV of the Rules.<sup>8</sup>

While many components of the Clearing Fund are designed to measure risks presented by the net unsettled positions a Member submits to NSCC to be cleared and settled, some components measure and mitigate other risks that NSCC may face, such as credit risks. For example, a Member may be required to make an additional deposit to the Clearing Fund pursuant to Section I(B)(1) of Procedure XV of the Rules if it is placed on the Watch List, which is defined in Rule 1 (Definitions and Descriptions) of the Rules as a list of Members who NSCC deems to pose heightened risk to it and its other Members based on consideration of relevant factors.<sup>9</sup>

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<sup>7</sup> The Rules identify when NSCC may cease to act for a Member and the types of actions NSCC may take. For example, NSCC may suspend a firm's membership with NSCC or prohibit or limit a Member's access to NSCC's services in the event that Member defaults on a financial or other obligation to NSCC. See Rule 46, supra note 3.

<sup>8</sup> Supra note 3.

<sup>9</sup> See Section 4 of Rule 2B, which describes NSCC's ongoing monitoring and review of Members and the factors NSCC considers in assigning Members a

Similarly, the ECP charge is a component of the Clearing Fund that is designed to mitigate the heightened default risk a Member could pose to NSCC if it operates with lower capital levels relative to its margin requirements. Each Business Day, NSCC determines if a Member may be subject to the ECP charge by first determining its Calculated Amount. The Calculated Amount is a portion of a Member's Required Fund Deposit designed to represent its margin requirements to NSCC. A Member's Calculated Amount is calculated as its Required Fund Deposit excluding any applicable special charge, margin requirement differential charge, coverage component charge or margin liquidity adjustment charge,<sup>10</sup> plus any additional amounts the Member is required to deposit to the Clearing Fund either due to being placed on the Watch List<sup>11</sup> or pursuant to Rule 15 (Assurances of Financial Responsibility and Operational Capability) of the Rules.<sup>12</sup>

NSCC then divides the Member's Calculated Amount by its current capital amount, which is the amount reported to NSCC pursuant to its ongoing membership standards, as set out in Rule 2B (Ongoing Membership Requirements and Monitoring)

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credit rating that could result in a Member being placed on the Watch List, supra note 3.

<sup>10</sup> The special charge is described in Section I(A)(1)(c) and (2)(c) of Procedure XV, the MRD charge is described in Section I(A)(1)(e) and (2)(d) of Procedure XV, the coverage component charge is described in Section I(A)(1)(f) and (2)(e) of Procedure XV, and the MLA charge is described in Section I(A)(1)(g) and (2)(f) of Procedure XV, supra note 3.

<sup>11</sup> Supra note 8.

<sup>12</sup> Pursuant to Section 2(b)(iv) of Rule 15, NSCC may require a Member to provide NSCC with adequate assurances of that Member's financial responsibility in the form of increased Clearing Fund deposits. Supra note 3.

and Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History) of the Rules.<sup>13</sup> Pursuant to the current membership standards in Addendum B of the Rules, Members that are broker-dealers are required to maintain a certain level of excess net capital, and Members that are banks are required to maintain a certain level of equity capital as a requirement for continued membership with NSCC.<sup>14</sup> Pursuant to Section 2 of Rule 2B of the Rules, Members are required to provide NSCC with financial information, including information regarding Members' current capital amounts, on a regular basis and NSCC uses these reported capital amounts in the calculation of the ECP charge.<sup>15</sup>

Pursuant to Section I(B)(2) of Procedure XV, if a Member's Calculated Amount, when divided by its applicable capital amount, is greater than the Excess Capital Ratio of 1.0, NSCC may require that Member to deposit an ECP charge.<sup>16</sup> The applicable ECP charge may be equal to the product of (1) the amount by which a Member's Calculated Amount exceeds its applicable capital amount, multiplied by (2) the Member's Excess Capital Ratio. Members are able to access and view reports regarding their Clearing Fund and, through these reports, Members may be alerted when their Calculated Amount

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<sup>13</sup> Supra note 3.

<sup>14</sup> See Section 1. B.1. of Addendum B, supra note 3. NSCC has proposed changes to the membership standards set forth in Addendum B that would modify the capital requirements for Members. See Securities Exchange Act Release No. 94068 (January 26, 2022), 21 FR 5544 (February 1, 2022) (SR-NSCC-2021-016).

<sup>15</sup> See Section 2(A) of Rule 2B, supra note 3.

<sup>16</sup> Supra note 3.

divided by the applicable capital amount is greater than 0.5, as an early warning regarding their capital levels.

Under Section I(B)(2) of Procedure XV, NSCC may collect a lower ECP charge than the amount calculated pursuant to the Rules, may determine not to collect the ECP charge from a Member at all, and may return all or a portion of a collected ECP charge if it believes the imposition or maintenance of the ECP charge is not necessary or appropriate.<sup>17</sup> Section I(B)(2) of Procedure XV describes some circumstances when NSCC may determine not to collect an ECP charge from a Member, which includes, for example, when an ECP charge results from trading activity for which the Member submits later offsetting activity that lowers its Required Fund Deposit.<sup>18</sup> The discretion to adjust, waive or return an ECP charge was designed to provide NSCC with the ability to determine when a calculated ECP charge may not be necessary or appropriate to mitigate the risks it was designed to address.<sup>19</sup>

Since the ECP charge was adopted, NSCC has calculated and assessed the ECP charge consistent with the Rules, and NSCC has exercised its discretion to both reduce and waive the ECP charge when NSCC has deemed it necessary or appropriate. NSCC recently reviewed the effectiveness of the ECP charge to identify ways NSCC could enhance both the calculation of the charge and the disclosures regarding the charge in the

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<sup>17</sup> When NSCC determines to collect a lower amount than that amount calculated pursuant to the Rules, as provided for under Procedure XV, NSCC may, for example, calculate that lower amount by reducing the Excess Capital Ratio used in the calculation to 2.0. Supra note 3.

<sup>18</sup> See footnote 7 of Procedure XV, supra note 3.

<sup>19</sup> See Securities Exchange Act Release No. 54457 (September 15, 2006), 71 FR 55239 (September 21, 2006) (SR-FICC-2006-03 and SR-NSCC-2006-03).

Rules. In connection with this review, NSCC discussed the ECP charge and its proposed enhancements with Members, NSCC management, and NSCC's supervisors at the Commission. As a result of this review, NSCC is proposing to make several enhancements to the ECP charge, as described in greater detail below.

These enhancements are designed to improve NSCC's ability to measure the increased default risks that are presented by Members who operate with lower capital. The proposed changes would simplify the calculation of the charge and the description of the charge in the Rules, making it more predictable to Members. The proposed changes are designed to improve the transparency of the ECP charge to Members by removing NSCC's discretion to waive or reduce the charge and providing that NSCC may calculate the charge based on updated capital information. The proposed improvements to the transparency of the ECP charge also include clarifying the descriptions of the capital amounts that would be used in the calculation of the charge through new defined terms. Collectively, the proposal would make the ECP charge more consistent, transparent, and predictable to Members, while maintaining the effectiveness of NSCC's risk-based margining methodology as it relates to the ECP charge.

***(ii) Use Members' Volatility Component as the Calculated Amount***

NSCC is proposing to replace the Calculated Amount with the amount collected as that Member's volatility component as determined pursuant to Sections I(A)(1)(a)(i)-(iii) and (2)(a)(i)-(iii) of Procedure XV of the Rules.<sup>20</sup>

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<sup>20</sup> The volatility component is designed to capture the market price risk associated with each Member's portfolio at a 99th percentile level of confidence. NSCC has two methodologies for calculating the volatility component – a model-based volatility-at-risk, or VaR, charge and a haircut-based calculation, for certain positions that are excluded from the VaR charge calculation. The charge that is



In both determining if an ECP charge is applicable and in calculating an ECP charge, NSCC currently compares a Member's Calculated Amount to its reported capital levels. As described above, the Calculated Amount is defined in Section I(B)(2) of Procedure XV as a Member's Required Fund Deposit, excluding certain components and including other additional deposits to the Clearing Fund.<sup>21</sup> Because a goal of the ECP charge is to identify and mitigate risks presented when a Member's capital levels may not be adequate to meet its margin requirements to NSCC, the Calculated Amount is designed to represent a material portion of those margin requirements.

As described above, because each component of the Clearing Fund is calculated to address specific risks faced by NSCC, some components are applied only to certain positions in a Member's portfolio. For example, the CNS fails charge, which is included in the Calculated Amount, is based on the market value of only a Member's CNS Fails Positions (as defined in the Rules) of the Member.<sup>22</sup> The volatility component of the Clearing Fund measures the market price volatility of all of a Member's Net Unsettled Positions and Net Balance Order Unsettled Positions (as defined in the Rules). Therefore,

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applied to a Member's Required Fund Deposit with respect to the volatility component is referred to as the volatility charge and is the sum of the applicable VaR charge and the haircut-based calculation. Amounts calculated pursuant to Sections I(A)(1)(a)(iv) and (2)(a)(iv) of Procedure XV with respect to long positions in Net Unsettled Positions in Family-Issued Securities are designed to address wrong-way risk presented by these positions, not volatility risks, and, as such, are not a part of a Member's volatility charge. See Sections I(A)(1)(a) and (2)(a) of Procedure XV, supra note 3.

<sup>21</sup> See supra note 9.

<sup>22</sup> See definition of "CNS Fails Position" in Rule 1, and see also Section I(A)(1)(e) of Procedure XV, supra note 3.

the volatility component is often considered a comprehensive measurement of the risks presented by a Member's clearing activity and usually comprises the largest portion of a Member's Required Fund Deposit.<sup>23</sup> NSCC believes that replacing the Calculated Amount with a Member's volatility charge would provide an appropriate measure for purposes of the ECP charge.

Currently, determining a Member's Calculated Amount requires a more complicated calculation, as it uses a Member's Required Fund Deposit, excludes certain components, and includes other deposits. The proposal would simplify this calculation significantly by using only the volatility component. One of the tools NSCC provides to its Members is a calculator that allows them to determine their potential volatility charge based on trading activity. Therefore, this proposed change would make the calculation of the ECP charge both clearer and more predictable for Members.

NSCC does not expect that any impact of this proposed change on the number of ECP charges or the size of the calculated ECP charges would materially impact NSCC's ability to manage the risks the ECP charge is designed to address. NSCC believes the benefits of using a simpler, clearer, and more predictable calculation that is based on the most comprehensive component of the Clearing Fund outweigh any risk related to the reduction in the ECP charges NSCC would collect.

***(iii) Use Net Capital for Broker-Dealer Members and Equity Capital for All Other Members in the Calculation of the ECP Charge***

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<sup>23</sup> See definitions of "Net Unsettled Position" and "Net Unsettled Balance Order Position" in Rule 1, supra note 3.

In the calculation of the ECP charge, NSCC is proposing to use net capital rather than excess net capital for Members that are broker-dealers, and equity capital for all other Members. As described in greater detail below, in connection with these proposed changes, NSCC would also improve the transparency of the Rules by adopting definitions of “Net Capital” and “Equity Capital.”

As described above, NSCC’s ongoing membership requirements, set forth in Rule 2B of the Rules, require Members to provide NSCC with regular information regarding their financial positions, including capital levels.<sup>24</sup> This information is provided, in part, to confirm that Members continue to maintain the minimum financial requirements of membership set forth in Addendum B of the Rules.<sup>25</sup> Currently, NSCC also uses these reported capital amounts in the calculation of the ECP charge.

First, NSCC believes it would be appropriate to revise the capital measure used to calculate the ECP charge for broker-dealer Members to replace excess net capital with net capital. This revision would align the capital measures used for broker-dealer Members and other Members, which would result in more consistent calculations of the ECP charge across different types of Members.

In addition to creating consistency in the calculations for different Members, NSCC believes that using net capital rather than excess net capital would also provide NSCC with a better measure of the increased default risks presented when a Member

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<sup>24</sup> See Section 2.A of Rule 2B, which requires Members to provide NSCC with a copy of their Form X-17-A-5 (Financial and Operational Combined Uniform Single (“FOCUS”) Report), Consolidated Report of Condition and Income (“Call Report”), or an equivalent, supra note 3.

<sup>25</sup> Supra note 3.

operates at low net capital levels relative to its margin requirements. This approach would be consistent with the rationale for the Commission’s amendments to Rule 15c3-1 under the Act (the “Net Capital Rule”), which were designed to promote a broker-dealer’s capital quality and require the maintenance of “net capital” (*i.e.*, capital in excess of liabilities) in specified amounts as determined by the type of business conducted.<sup>26</sup> The Net Capital Rule was designed to ensure the availability of funds and assets (including securities) in the event that a broker-dealer’s liquidation becomes necessary. The Net Capital Rule represented a net worth perspective, which is adjusted by unrealized profit or loss, deferred tax provisions, and certain liabilities as detailed in the rule. It also included deductions and offsets and required that a broker-dealer demonstrate compliance with the Net Capital Rule, including maintaining sufficient net capital at all times (including intraday).

Similarly, NSCC believes that the Net Capital Rule is an effective process of separating liquid and illiquid assets and computing a broker-dealer’s regulatory net capital that should replace NSCC’s existing practice of using excess net capital in the calculation of the ECP charge.

Second, NSCC is proposing to revise the Rules to provide that, for all Members that are not broker-dealers, it would use equity capital in calculating the ECP charge. Currently, the Rules state that NSCC would use a Member’s capital amount set forth in the membership standards in Addendum B of the Rules.<sup>27</sup> Section 1.B of Addendum B

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<sup>26</sup> 17 CFR 240.15c3-1. See Securities Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51823 (August 21, 2013) (File No. S7-08-07).

<sup>27</sup> Supra note 3.

describes the membership standards of Members, and currently states that the applicable capital measure for Members that are banks is equity capital, for Members that are trust companies and not banks the applicable capital measure is consolidated capital, and for other legal entities that are Members the applicable capital measure is determined by NSCC. Currently, and historically, NSCC has had very few Members that are trusts and not banks. For all Members that are not banks, non-bank trusts or broker-dealers (which generally include, for example, exchanges and registered clearing agencies), NSCC uses those Members' reported equity capital in the calculation of the ECP charge. Therefore, in practice, the ECP charge is calculated for the majority of Members that are not broker-dealers using their equity capital, and this proposed change is not expected to have a material impact on the collection of ECP charges. The proposal would simplify the calculation of the ECP charge for Members that are not broker-dealers by stating in Section I(B)(2) of Procedure XV that NSCC would use equity capital rather than use different measures that are based on other membership requirements. This proposed change would also create consistency in the calculations across Members.

*(iv) Establish a Cap for the Excess Capital Ratio*

NSCC is proposing to set a maximum amount of Excess Capital Ratio that is used in calculating Members' ECP charge to 2.0. NSCC believes capping the multiplier that is used in this calculation would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge. Historically, the Excess Capital Ratio has rarely exceeded 2.0 in the calculation of Members' ECP charges, and in cases when 2.0 was exceeded NSCC typically exercised the discretion provided to it in the Rules to reduce the applicable charge. NSCC's discretion was appropriate in these

circumstances because NSCC believes it is able to mitigate the risks presented to it by a Member's lower capital levels by collecting an ECP charge calculated with an Excess Capital Ratio that is at or below 2.0.

Therefore, given that NSCC is now proposing to remove its discretion to waive the ECP charge, as described below, NSCC believes capping the Excess Capital Ratio at 2.0 would continue to provide NSCC with an appropriate measure of the risks presented to it relative to Members' capital levels. This proposed change would also provide Members with more clarity and transparency into the ECP charge, by allowing them to predict and estimate the maximum amount of their potential ECP charge.

*(v) Improve Transparency Regarding the ECP Charge*

NSCC is proposing changes to Section I(B)(2) of Procedure XV to improve transparency regarding the ECP charge by (a) clarifying the description of the capital amounts that NSCC uses in the calculation of the ECP charge by adopting new defined terms, (b) removing NSCC's discretion to waive or reduce the charge, and (c) providing that NSCC may calculate the charge based on updated capital information.

First, NSCC is proposing to clarify the description of the capital amounts that it uses to calculate the ECP charge by introducing defined terms and specifying the reporting requirements that NSCC relies on to obtain that capital information for Members. As described above, for Members that are broker-dealers, NSCC is proposing to use a Member's net capital amount, and for all other Members, NSCC would use a Member's equity capital in the calculation of the ECP charge. In order to improve the clarity of the Rules, NSCC is proposing to introduce a defined term for "Equity Capital" in Rule 1 and to revise a proposed defined term for "Net Capital" in order to align the two

defined terms. The proposal would also revise Section I(B)(2) of Procedure XV in describing the calculation of the ECP charge to use these defined terms where appropriate. Finally, the proposal would amend Addendum B to include the new defined term for Equity Capital.

The definition of Equity Capital would be, as of a particular date, the amount equal to the equity capital as reported on the Member's or Limited Member's most recent Call Report, or, if the Member or Limited Member is not required to file a Call Report, then as reported on its most recent financial statements or equivalent reporting. NSCC would also align a proposed definition of Net Capital to be, as of a particular date, the amount equal to the net capital as reported on the Member's or Limited Member's most recent FOCUS Report, or, if the Member or Limited Member is not required to file a FOCUS Report, then as reported on its most recent financial statements or equivalent reporting.

In addition to using these new defined terms, NSCC would also add a statement to Section I(B)(2) of Procedure XV to clarify to Members that the amounts used in the calculation of the ECP charge would be the amounts included in their regular reporting that is provided to NSCC pursuant to the ongoing membership reporting requirements, specifically in their FOCUS Report or Call Report, as applicable, or in an equivalent financial statement or report that is delivered to NSCC pursuant to the same requirement. Collectively, these proposed changes would provide Members with improved clarity and certainty regarding the amounts that would be used in calculating the ECP charge.

Second, the proposed changes would eliminate NSCC's discretion to waive or reduce the ECP charge. NSCC believes that the proposed changes to the ECP charge

described in this filing would have the collective impact of eliminating most circumstances in which NSCC would have exercised this discretion. For example, the proposal to cap the Excess Capital Ratio at 2.0 and the proposal to specify that NSCC may calculate an ECP charge based on updated capital amounts, both address the most common circumstances when NSCC has either waived or reduced the ECP charge in the past. By eliminating this discretion, the proposal would provide Members with more certainty in predicting when an ECP charge may be applied and how any such charge would be calculated. Therefore, NSCC has determined that it is no longer necessary to retain discretion to waive or reduce the ECP charge under the proposed methodology.

Third, NSCC would provide that it may calculate the ECP charge based on updated capital information. As described above, NSCC would use the net capital or equity capital amounts that are reported on Members' most recent financial reporting or financial statements delivered to NSCC in connection with the ongoing membership reporting requirements. Under the proposal, if a Member's capital amounts change between the dates when it submits these financial reports, it may provide NSCC with updated capital information for purposes of calculating the ECP charge. Today, when NSCC exercises its discretion to waive or reduce the amount of an applicable ECP charge, NSCC occasionally does so by applying updated capital information in its calculation. Therefore, in connection with eliminating this discretion, NSCC would disclose in the Rules that it may use updated capital information in the calculation of an ECP charge rather than require Members to wait until the issuances of their next financial reporting or financial statements for changes in their capital positions to be reflected in an ECP charge calculation.



NSCC is proposing to retain some discretion in when it would accept updated capital information for this purpose. For example, NSCC may require a Member to provide documentation of the circumstances that caused a change in capital information, and if adequate evidence is not available or NSCC does not believe the evidence sufficiently verifies that the Member's capital position has changed, NSCC would continue to calculate the ECP charge for that Member based on the prior capital information available to NSCC until the next financial reporting or financial statements are delivered. NSCC believes it is appropriate to retain some discretion to allow NSCC to determine if updated capital information is adequately verified before it agrees to rely on that information for this calculation. NSCC believes the proposal to disclose that Members would have the opportunity to provide updated capital information to NSCC to be used in an ECP charge calculation would improve the transparency of the Rules despite NSCC's proposal to retain a certain level of discretion.

***(vi) Proposed Changes to Procedure XV of the Rules***

The proposal would also amend Section I(B)(2) of Procedure XV of the Rules. This section would describe the calculation used to determine if an ECP charge may be applicable to a Member. The revised description of this calculation would (i) replace the definition of Calculated Amount with Members' volatility charge, (ii) replace references to the capital amounts used in the calculation with the new defined terms for Net Capital and Equity Capital, and (iii) state that the Excess Capital Ratio used in calculating an ECP charge is set at a maximum of 2.0. The proposed change also includes a statement that the applicable capital amounts used in the calculation would be the amounts most recently reported to NSCC on Members' FOCUS Reports or Call Reports, as applicable,

or other equivalent financial reporting submitted to NSCC pursuant to Section 2 of Rule 2B. Finally, the proposal would state that NSCC may, in its sole discretion, accept updated capital amounts in calculating an ECP charge.

***(vii) Impact Study Results***

NSCC has provided the Commission with the results of an impact study that reviewed the potential impacts of the proposal during the period of June 1, 2020 through December 31, 2021. The study showed that the proposed enhancement would have reduced the number of ECP charges that would have been triggered by the calculation by 65 percent, from 327 ECP charges triggered for 17 Members to 114 ECP charges triggered for 14 Members. The total aggregate amount that would have been triggered by the proposed calculation if the proposal was effective during that time would have been reduced from \$50.95 billion (the actual total amount of ECP charges triggered by the current calculation during that period) to approximately \$17.22 billion (the total amount of ECP charges that would have been triggered during that time by the proposed calculation). The average amount that would have been calculated for each Member would have been reduced from \$155.8 million to approximately \$151.1 million. The study showed that the proposal would have had no impact to NSCC's overall, or Member-level, end-of-day Clearing Fund Requirement backtesting coverage.

Over the impact study period, NSCC waived and reduced calculated ECP charges by \$38.46 billion. NSCC waived a total of 20 ECP charges, that totaled approximately \$25.77 billion. If the proposal had been in place at that time, 15 of these charges would have been collected from Members (although the amount would have been reduced), totaling \$6.43 billion, 2 charges would not have been triggered as the calculated ECP

ratio was below 1.0, and NSCC would have waived 3 of the ECP charges following receipt of updated financial information. NSCC reduced the amount of 16 ECP charges by a total of approximately \$12.69 billion. If the proposal had been in place at that time, 6 of these charges would have been still collected, totaling \$6.35 billion, and 10 charges would not have been triggered as the calculated ECP ratio was below 1.0.

*(viii) Implementation Timeframe*

NSCC would implement the proposed changes no later than 30 Business Days after the approval of the proposed rule change by the Commission. NSCC would announce the effective date of the proposed changes by Important Notice posted to its website.

2. Statutory Basis

NSCC believes the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,<sup>28</sup> and Rules 17Ad-22(e)(4)(i), (e)(6)(i) and (e)(23)(ii), each promulgated under the Act,<sup>29</sup> for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of NSCC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>30</sup>

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<sup>28</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>29</sup> 17 CFR 240.17Ad-22(e)(4)(i), (e)(6)(i) and (e)(23)(ii).

<sup>30</sup> 15 U.S.C. 78q-1(b)(3)(F).

NSCC believes the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act because such changes enhance the effectiveness of the ECP charge by (1) replacing the Calculated Amount with a Member's volatility component, (2) replacing excess net capital with net capital for broker-dealer Members and using equity capital for all other Members, and (3) establishing a cap for the Excess Capital Ratio. As described above, NSCC believes these proposed changes would create a simpler, clearer calculation of the ECP charge that is based on more consistent metrics, while allowing NSCC to continue to effectively address the heightened default risks presented by Members that operate at lower capital levels.

The Clearing Fund is a key tool that NSCC uses to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event of Member default. Each of the proposed enhancements described above are designed to collectively improve NSCC's ability to collect amounts that reflect the risks posed by its Members. The proposal to enhance the calculation of the ECP charge by replacing the Calculated Amounts with Members' volatility charges would make the calculation clearer and more predictable to Members. The proposal to use net capital for broker-dealer Members and equity capital for all other Members in the calculation of the ECP charge would result in a more consistent calculation across different types of Members. The proposal to cap the Excess Capital Ratio at 2.0 would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge, and would allow NSCC to eliminate its discretion to waive or reduce the charge, resulting in a more transparent margining methodology.

Together, by improving the consistency and predictability of the ECP charge, the proposed enhancements would also improve NSCC's ability to collect amounts that reflect the risks posed by its Members such that, in the event of Member default, NSCC's operations would not be disrupted, and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the proposed rule change is designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.<sup>31</sup>

The proposed changes are also designed to improve the transparency of the Rules regarding the ECP charge, for example, by removing NSCC's discretion to recalculate, reduce or waive the charge, as described above, and by introducing new defined terms regarding the capital amounts used in the charge. By enhancing the clarity and transparency of the Rules, the proposed changes would allow Members to better anticipate their margin charges, which would allow them to more efficiently and effectively conduct their business in accordance with the Rules. In this way, NSCC believes the proposed changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>32</sup>

Rule 17Ad-22(e)(4)(i) under the Act requires that 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 arising from its payment, clearing, and settlement processes, including by maintaining

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<sup>31</sup> Id.

<sup>32</sup> Id.

sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.<sup>33</sup>

As described above, NSCC believes the proposed rule change would enable NSCC to better identify, measure, monitor, and, through the collection of Members' Required Fund Deposits, manage its credit exposures to Members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence. Specifically, NSCC believes that the proposed enhancements to the calculation of the ECP charge to use the volatility charge rather than the Calculated Amount, and to use net capital and equity capital, as appropriate, would collectively make the calculation clearer and more predictable to Members. The proposal to use net capital rather than excess net capital for broker-dealer Members, and equity capital for all other Members, would also result in a more consistent calculation across different types of Members. Finally, the proposal to cap the Excess Capital Ratio at 2.0 would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge, and would allow NSCC to eliminate its discretion to waive or reduce the charge, resulting in a more transparent margining methodology.

Overall, NSCC believes the proposal would improve the clarity and predictability of the ECP charge and, in this way, would enhance NSCC's ability to effectively identify, measure and monitor its credit exposures, and would enhance NSCC's ability to maintain sufficient financial resources to cover NSCC's credit exposure to each participant fully

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<sup>33</sup> 17 CFR 240.17Ad-22(e)(4)(i).

with a high degree of confidence. As such, NSCC believes the proposed rule change is consistent with Rule 17Ad-22(e)(4)(i) under the Act.<sup>34</sup>

Rule 17Ad-22(e)(6)(i) under the Act 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>35</sup>

The Required Fund Deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit NSCC's exposures to Members. NSCC's proposed changes to use the volatility charge rather than the Calculated Amount, and to use net capital and equity capital, as appropriate, in the calculation of the ECP charge would collectively make the calculation clearer and more predictable to Members, while continuing to apply an appropriate risk-based charge designed to mitigate the risks presented to NSCC. Similarly, the proposal to cap the Excess Capital Ratio at 2.0 would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge, and would allow NSCC to eliminate its discretion to waive or reduce the charge, resulting in a more transparent margining methodology. Overall, these proposed changes would improve the effectiveness of the calculation of the ECP charge and, therefore, allow NSCC to more effectively address the increased default risks presented by Members that operate with lower capital levels relative to their margin

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<sup>34</sup> Id.

<sup>35</sup> 17 CFR 240.17Ad-22(e)(6)(i).

requirements. In this way, the proposed changes enhance the ability of the ECP charge to produce margin levels commensurate with the risks NSCC faces related to its Members' operating capital levels. Therefore, NSCC believes the proposed rule change is consistent with Rule 17Ad-22(e)(6)(i) under the Act.<sup>36</sup>

Rule 17Ad-22(e)(23)(ii) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in NSCC.<sup>37</sup> NSCC is proposing to improve the clarity and transparency of the Rules related to its calculation of the ECP charge in a number of ways described in this filing. The proposed changes would clarify the description of the capital amounts that NSCC uses in the calculation of the ECP charge by adopting new defined terms, remove NSCC's discretion to waive or reduce the charge, and provide that NSCC may calculate the charge based on updated capital information. Additionally, as described above, the proposed changes to use the volatility charge rather than the Calculated Amount, and to use net capital and equity capital, as appropriate, in the calculation of the ECP charge, would collectively make the calculation clearer and more predictable to Members. Through these proposed amendments to the Rules, the proposal would assist NSCC in providing its Members with sufficient information to identify and evaluate the risks and costs, in the form of Required Fund Deposits to the Clearing Fund, that they incur by participating in NSCC. In this way,

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<sup>36</sup> Id.

<sup>37</sup> 17 CFR 240.17Ad-22(e)(23)(ii).



NSCC believes the proposed changes are consistent with Rule 17Ad-22(e)(23)(ii) under the Act.<sup>38</sup>

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

NSCC does not believe the proposed rule change to enhance the calculation of the ECP charge would impact competition because the proposed changes are designed to create a clearer and simpler calculation that is based on more consistent metrics, and is likely to result in lower and less frequent ECP charges than are applied under the current methodology. More specifically, the replacement of the Calculated Amount with the volatility charge, which is currently a portion of the Calculated Amount, when used in the calculation to determine if an ECP charge is applicable, is likely to result in fewer triggered ECP charges, as evidenced by the impact study referenced above. Additionally, the replacement of excess net capital with net capital for broker-dealer Members, and using equity capital for all other Members, would create more consistent calculations of the ECP charge across types of Members, reducing any burden on competition that the existing calculation could have presented. Finally, the proposal to cap the Excess Capital Ratio to 2.0 in the calculation of the ECP charge would limit the total amount a Member could be charged, and would provide all Members with more certainty and transparency into their potential margin requirements.

Therefore, by creating a simpler and clearer calculation that uses more consistent metrics, the proposals would improve NSCC's ability to apply the ECP charge more consistently across its Members, and reduce the impact this charge could have on

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<sup>38</sup> Id.

competition. As noted above, in the impact study results, the proposed changes are also expected to result in fewer and lower ECP charges.

Further, NSCC does not believe the proposed rule change to improve the clarity and predictability of the calculation of the ECP charge would impact competition because this proposed change would not impact the calculation of Members' Required Fund Deposits. Therefore, this proposed change would not affect NSCC's operations or the rights and obligations of membership. As such, NSCC believes the proposed rule change to improve the transparency of the Rules 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

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 to not respond to any comments received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change

should be disapproved.

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-2022-005 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-2022-005. 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-2022-005 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>39</sup>

J. Matthew DeLesDernier,  
Assistant Secretary.

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<sup>39</sup> 17 CFR 200.30-3(a)(12).