

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95656; File No. SR-NSCC-2022-005)

September 1, 2022

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Revise the Excess Capital Premium Charge

I. Introduction

On May 20, 2022, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-NSCC-2022-005 (the “Proposed Rule Change”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² The Proposed Rule Change was published for comment in the Federal Register on June 8, 2022,³ and the Commission has received comments regarding the changes proposed in the Proposed Rule Change.⁴

On July 11, 2022, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve, disapprove, or institute proceedings

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 95026 (June 2, 2022), 87 Fed. Reg. 34913 (June 8, 2022) (File No. SR-NSCC-2022-005). The Notice referred to an incorrect filing date of May 30, 2022; however, the proposal was filed on May 20, 2022, as indicated here.

⁴ Comments are available at <https://www.sec.gov/comments/sr-nsc-2022-005/srnsc2022005.htm>.

⁵ 15 U.S.C. 78s(b)(2).

to determine whether to approve or disapprove the Proposed Rule Change.⁶ This order institutes proceedings, pursuant to Section 19(b)(2)(B) of the Act,⁷ to determine whether to approve or disapprove the Proposed Rule Change.

II. Summary of the Proposed Rule Change

A key tool that NSCC uses to manage its respective credit exposures to its members is the daily collection of margin from each member, which is referred to as each member's Required Fund Deposit. The aggregated amount of all members' margin constitutes the Clearing Fund, which NSCC would access should a defaulted member's own margin be insufficient to satisfy losses to NSCC caused by the liquidation of that member's portfolio.

The Excess Capital Premium (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.

As described in the Notice, NSCC proposes to modify Procedure XV (Clearing Fund Formula and Other Matters) of NSCC's Rules & Procedures ("Rules") to 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

⁶ Securities Exchange Act Release No. 95245 (July 11, 2022), 87 Fed. Reg. 42523 (July 15, 2022) (SR-NSCC-2022-005).

⁷ 15 U.S.C. 78s(b)(2)(B).

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.⁸ In addition, NSCC proposes to make additional changes directed at the transparency of the Rules regarding the ECP charge, including (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.

First, NSCC proposes to revise the ECP Charge to use the members' Volatility Component⁹ as the Calculated Amount. Specifically, it proposes to replace the Calculated Amount with the amount collected as that member's volatility component as

⁸ The description of the Proposed Rule Change is based on the statements prepared by NSCC in the Notice. See Notice, supra note 3. Capitalized terms used herein and not otherwise defined herein are defined in the Rules, available at https://www.dtcc.com/-/media/Files/Downloads/legal/rules/nsccl_rules.pdf.

⁹ 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 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.

determined pursuant to Sections I(A)(1)(a)(i)-(iii) and (2)(a)(i)-(iii) of Procedure XV of the Rules.

Second, NSCC proposes to make changes to the calculation of the ECP charge based on whether or not a member is a broker-dealer. Specifically, for broker-dealer members, it would revise the capital measure used to calculate the ECP charge to replace excess net capital with net capital. In addition, it would revise the calculation of the ECP charge for members that are not broker-dealers by using equity capital rather than different measures that are based on other membership requirements.

Third, NSCC proposes to set a maximum amount of Excess Capital Ratio that is used in calculating members' ECP charge to 2.0.

Finally, NSCC proposes certain changes directed at improving transparency regarding the Excess Capital Premium. Specifically, the proposed changes would eliminate NSCC's discretion to waive or reduce the ECP charge. In addition, the proposed changes would add new definitions to its Rules to clarify the description of the capital amounts that NSCC uses in the calculation of the ECP charge and provide that NSCC may calculate the charge based on updated capital information.

III. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁰ to determine whether the Proposed Rule Change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not

¹⁰ 15 U.S.C. 78s(b)(2)(B).

indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, providing the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Act,¹¹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Act,¹² and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Act,¹³ which requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, 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, and to protect investors and the public interest; and
- Rule 17Ad-22(e)(4)(i) of the Act,¹⁴ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage

¹¹ Id.

¹² 15 U.S.C. 78q-1.

¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁴ 17 CFR 240.17Ad-22(e)(4)(i).

its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.

- Rule 17Ad-22(e)(6)(i) of the Act,¹⁵ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, 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.
- Rule 17Ad-22(e)(23)(ii) of the Act¹⁶ which requires that a covered clearing agency 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 other material costs they incur by participating in the covered clearing agency.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the

¹⁵ 17 CFR 240.17Ad-22(e)(6)(i).

¹⁶ 17 CFR 240.17Ad-22(e)(23)(ii).

Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,¹⁷ and Rules 17Ad-22(e)(4)(i), (e)(6)(i) and (e)(23)(ii) of the Act,¹⁸ or any other provision of the Act, or the rules and regulations thereunder.

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

The Commission asks that commenters address the sufficiency of NSCC's statements in support of the Proposed Rule Change, which are set forth in the Notice,¹⁹ in addition to any other comments they may wish to submit about the Proposed Rule Change.

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. Please include File Number SR-NSCC-2022-005 on the subject line.

Paper Comments:

¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

¹⁸ 17 CFR 240.17Ad-22(e)(4)(i), (e)(6)(i) and (e)(23)(ii).

¹⁹ See Notice, supra note 3.

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,
Deputy Secretary.

²⁰ 17 CFR 200.30-3(a)(31).