

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-103952; File No. SR-NSCC-2025-013)

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend the CNS Fails Charge in the NSCC Rules

September 11, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 5, 2025, 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. 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 provisions in the NSCC Rules & Procedures (“Rules”) regarding the margin charge that is applied when a Member fails to settle a Short Position or a Long Position by the applicable settlement date (“CNS Fails Charge”).³ Specifically, the proposed changes would (i) discontinue the application of the CNS Fails Charge on Long Positions (i.e., fails to receive), (ii) eliminate the Credit Risk Rating Matrix (“CRRM”)⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The CNS Fails Charge is currently imposed by NSCC pursuant to Procedure XV (Clearing Fund Formula and Other Matters), Section I.(A)(1)(d). Id.

⁴ The CRRM is a credit risk rating model NSCC utilizes to evaluate and rate the credit risk of NSCC’s U.S. bank, foreign bank, and U.S. broker-dealer Members, and rate such Members based upon qualitative and quantitative information. See definition of Credit Risk Rating Matrix in Rule 1 (Definitions and Descriptions), infra note 5.

from the calculation, and (iii) assess the charge based on the duration that the failed Short Positions remains outstanding.⁵

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 would amend provisions in the Rules regarding the CNS Fails Charge. Specifically, the proposed changes would (i) discontinue the application of the CNS Fails Charge on Long Positions (i.e., fails to receive), (ii) eliminate the CRRM from the calculation, and (iii) assess the charge based on the duration that the failed Short Positions remains outstanding.

(i) Overview of the Required Fund Deposit and the CNS Fails Charge

As part of its market risk management strategy, NSCC manages its credit exposure to Members by calculating the appropriate Required Fund Deposits to the Clearing Fund and

⁵ Terms not defined herein are defined in the Rules, available at www.dtcc.com/legal/rules-and-procedures.

monitoring the Clearing Fund's sufficiency, as provided for in the Rules.⁶ The Required Fund Deposit serves as each 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. Each NSCC Member's Required Fund Deposit is comprised of several risk-based component charges, including the CNS Fails Charge, which is calculated and assessed daily. 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. The Clearing Fund reduces the risk that NSCC would need to mutualize any losses among non-defaulting members during the liquidation process.

When a Member does not either deliver a Short Position or receive a Long Position due by the applicable Settlement Date, NSCC, as a central counterparty, is exposed to credit and market risks. To offset the risk exposures to NSCC and to incentivize Members to satisfy their obligations relating to their outstanding trades on Settlement Date, NSCC currently calculates and collects the CNS Fails Charge from Members with Short Positions and Long Positions that did not settle on the Settlement Date ("CNS Fails Positions"). The amount of the CNS Fails Charge imposed on a Member varies based on the Member's credit rating derived from the CRRM.

The CNS Fails Charge is calculated by multiplying the Current Market Value for such Member's aggregate CNS Fails Positions by a percentage. For a Member that is not rated on the

⁶ See Rule 4 (Clearing Fund) and 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).

CRRM and for a Member that is rated 1 through 4 on the CRRM, the CNS Fails Charge is 5% of the Member's aggregate CNS Fails Positions. For a Member that is rated 5 or 6 on the CRRM, the CNS Fails Charge is 10% of the Member's aggregate CNS Fails Positions. For a Member that is rated 7 on the CRRM, the CNS Fails Charge is 20% of the Member's aggregate CNS Fails Positions.

(ii) Proposed Changes to the CNS Fails Charge

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 is proposing to enhance the CNS Fails Charge by (a) discontinuing the application of the CNS Fails Charge on Long Positions, (b) eliminating the CRRM from the calculation, and (c) assessing the charge based on the duration that the Short Position has been failing to be delivered as discussed below.

(a) Discontinue CNS Fails Charge on Long Positions

NSCC's Continuous Net Settlement System ("CNS") is an automated accounting and securities settlement system that centralizes and nets the settlement of compared and recorded securities transactions and maintains an orderly flow of security and money balances.⁷ Within CNS, all eligible compared and recorded transactions for a particular Settlement Date are netted by issue into one position per Member. The position can be a net Long Position (receive), net Short Position (deliver) or flat. As a continuous net system, those positions are further netted with positions of the same CNS Security that remain open after their original scheduled settlement date (usually one business day after the trade date or T+1), so that transactions scheduled to settle on any day are netted with CNS Fails Positions (i.e., positions that have failed

⁷ See NSCC Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation), supra note 5.

in delivery or receipt on the Settlement Date), which results in a single deliver or receive obligation for each Member for each CNS Security in which the Member has activity.

CNS is a net flat system and allocates shares received via an algorithm to those who are set to receive. CNS can only allocate shares if a Member with a Short Position makes the delivery into CNS on the Settlement Date. Members have limited control⁸ on whether they will receive shares from CNS if the corresponding Members set to deliver do not deliver shares in their entirety to CNS. Given this limited ability to control if they are allocated shares that they are set to receive, NSCC believes it is not appropriate to assess a CNS Fails Charge on Members who fail to receive an allocation from CNS for a Long Position.

In addition, CNS Fails Positions, including Long Positions where the Member failed to receive, are currently subject to NSCC's normal risk margining procedures and risk associated with these positions is accounted for in the existing risk calculations. Fail positions are re-netted into Members' unsettled guaranteed portfolios, which is subject to NSCC's full margin methodology. The CNS Fails Charge, while part of that methodology, is an additive charge on top of the model-based components and any Market-to-Market collected.

As part of its ongoing review of risk management programs—and in conjunction with other proposed changes to the CNS Fails Charge outlined below—NSCC is proposing to eliminate the application of the CNS Fails Charge on failed Long Positions.

(b) Eliminate CRRM from CNS Fails Charge calculation

⁸ NSCC provides a “Buy-In” process which enables receiving Members to (i) submit a Buy-In Intent and receive priority on allocation of receipt of securities and (ii) allow Members that have failed to receive securities by settlement date the ability to purchase the securities in the market to cover their fails position. See Section J of Procedure VII and Procedure X (Execution of Buy-Ins), supra note 5.

The CNS Fails Charge is currently calculated using a percentage based on each Member's CRRM rating. The risk posed from the fail to deliver is specific to the individual position that is failing, and NSCC believes that a better measure of the risk related to the CNS Fails Position is how long the position has been outstanding. As the risk posed by the failed position is less influenced by the Member that failed to make delivery, NSCC believes that the CNS Fails Charge should not be scaled to Member specific criteria such as CRRM and is therefore proposing to eliminate CRRM from the CNS Fails Charge calculation and replacing it with a charge based on the length of time that the CNS Fails Position remains outstanding.

(c) Assess Charge Based on Length Outstanding

While any position specific risk from a failed position is addressed by NSCC's existing margin methodology, a position for which a Member has been failing to deliver for an extended period may be indicative of additional risk associated with the position. To encourage timely delivery of settlement obligations and address this additional risk, NSCC is proposing to assess the CNS Fails Charge using a percentage ranging from 5% to 100% based on the length of time a Member has been failing to deliver a position. The percentages initially will be (i) 5% for CNS Fails Positions that have remained outstanding 1 to 4 Business Days, (ii) 15% for CNS Fails Positions that have remained outstanding 5 to 10 Business Days, (iii) 20% for CNS Fails Positions that have remained outstanding 11 to 20 Business Days, and (iv) 100% for CNS Fails Positions that have remained outstanding longer than 20 Business Days. If a Member delivers a position for a CNS Fails Position in the night cycle following the applicable settlement date, NSCC will account for the delivery amount and offset the failed quantity by the quantity delivered in the night cycle. Additionally, if a Member's start of day position in a CUSIP that failed to be delivered the prior settlement date is net long for the portion of that position settling on the current business date, a fails charge will not be assessed.

The proposed percentages are designed to provide a mechanism to reduce fails and protect NSCC from potentially incurring higher costs in sourcing the CNS Fails Positions in a Member default event, where the haircut applied increases the longer the CNS Fails Position remains outstanding. NSCC determined the proposed percentages by using the existing haircut range of 5-20% for the current CNS Fails Charge as a baseline for charges under the new proposal. NSCC then escalated the charge to 100% for fails aged over 20 Business Days, which is grounded in both risk sensitivity and behavioral incentives. NSCC determined that the risk associated with a failed position increases the longer it remains unsettled. While short-term fails may reflect operational delays, extended fails, especially those exceeding 20 Business Days, might signal a reduced or impaired market liquidity that increases market price risk to NSCC. The proposed 100% charge is intended to reflect this elevated risk exposure and ensure NSCC is adequately protected. By escalating the charge to 100% after 20 Business Days, NSCC aims to discourage prolonged settlement failures and promote market discipline.

In connection with its regular assessment of its margining methodologies, NSCC would review the CNS Fails Charge haircut percentages to determine the effects on the Members and whether the percentages continue to be adequate.

NSCC will post the applicable percentages for CNS Fails Positions on its website and provide reports to Members detailing their open positions, including their CNS Fails Positions and associated CNS Fails Charges for each.

(iii) Detailed Description of the Proposed Rule Changes

NSCC is proposing to revise the definition of CNS Fails Position in Rule 1 to remove Long Position.

NSCC is also proposing to amend Procedure XV, Section I.(A)(1)(d) to remove the references to CRRM and provide that Members would be charged percentages for CNS Fails

Position ranging from 5% to 100% based on the number of Business Days that the CNS Fails Positions have remained outstanding. The proposed changes would provide that NSCC shall post the applicable percentages on the NSCC website, and the percentages may be updated from time to time as announced by Important Notice.

(iv) Member Impact of Proposed Changes

NSCC conducted an impact study of the proposed changes based on data from January 2, 2024 through April 30, 2025 (“Impact Study”). The Impact Study indicated that if the proposed changes had been in place during the Impact Study period, the proposed changes would have led to an aggregate reduction in CNS Fails Charges by approximately 56.1% or \$238.5 million. This reduction was primarily due to the removal of the charge on Long Positions. NSCC observed a charge decrease of 16.9%, or \$35.6 million, in failure to deliver positions during the Impact Study. This was primarily due to increases in the CNS Fails Charge on older CNS Fails Positions which offset the reduction in charge on positions failing for only a few days. The Impact Study also revealed that NSCC level backtest coverage remained above 99%, and no Member level coverage fell below 99%, with the proposed changes.

The Impact Study indicated that the largest increase in CNS Fails Charges for any Member would have been \$12.7 million on average, and the largest decrease in CNS Fails Charges for any Member would have been \$41.1 million on average had the proposed changes been in place during the Impact Study period.

(v) Implementation Timeframe

NSCC would implement the proposed rule changes by no later than 60 Business Days after the approval of the proposed rule change by the Commission. NSCC would announce the effective date of the proposed changes by an Important Notice posted to its website.

2. Statutory Basis

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, NSCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁹ and Rules 17ad-22(e)(4) and (e)(6)(i),¹⁰ each as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the Rules be designed to 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 NSCC or for which it is responsible.¹¹ The proposed rule changes to modify the assessment and collection of the CNS Fails Charge would enable NSCC to more appropriately and accurately calculate a CNS Fails Charge based on the risk failed positions pose to NSCC. First, the proposed changes would provide a more appropriate and effective incentive for Members to limit outstanding fails positions. The removal of the charge on Long Positions is appropriate as Members have limited control on whether they will receive shares from CNS if the corresponding Members do not deliver their shares in their entirety to CNS, and risk associated with these positions is adequately accounted for in the existing risk calculations. In addition, providing an increasing CNS Fails Charge based on how long the CNS Fails Position has been outstanding would provide a greater incentive to Members to deliver on aged CNS Fails Positions. Second, the proposed changes would provide for a charge that more accurately reflects the risk of the CNS Fails Positions.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 240.17ad-22(e)(4) and (e)(6)(i).

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

Replacing the CRRM criteria with percentages based on the age of the CNS Fails Positions would lead to a more accurate calculation of the CNS Fails Charge because the risk associated with the fail to deliver is specific to the individual position that is failing. Therefore, a better measure of the risk related to the CNS Fails Position is the duration the position has been outstanding, rather than a Member's CRRM rating that failed to deliver the position into CNS. More accurately and effectively mitigating NSCC's risk exposure from CNS Fails Positions would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

Rule 17ad-22(e)(4) under the Act requires NSCC to 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 exposures arising from its payment, clearing and settlement processes.¹² The CNS Fails Charge is being imposed on Members with CNS Fails Positions in order to reduce credit exposures to NSCC resulting from those positions. As proposed, it is designed to obtain from such Members financial resources commensurate with the credit exposures posed to NSCC by such Member's CNS Fails Positions. The proposed changes would result in a more appropriate and accurate assessment and calculation of CNS Fails positions based on the risk exposure to NSCC. Removing the charge for Long Positions is appropriate as Members have limited control on the ability to receive and risk associated with these positions is adequately accounted for in the existing risk calculations. Replacing the CRRM criteria with percentages based on the age of the CNS Fails Positions would lead to a more accurate calculation of the CNS Fails Charge because the risk associated with the fail to deliver is specific to the individual position that is failing. A better measure of the

¹² 17 CFR 240.17ad-22(e)(4).

risk related to the CNS Fails Position is the duration the position has been outstanding, rather than a Member's CRRM rating that failed to deliver the position into CNS. Therefore, NSCC believes that management of its credit exposures to its Members through a more appropriate and accurate CNS Fails Charge is consistent with Rule 17ad-22(e)(4) under the Act.

Rule 17ad-22(e)(6)(i) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its Members 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.¹³ When applicable, the CNS Fails Charge is a component of a Member's Required Fund Deposit and is designed to cover NSCC's credit exposures to Members with CNS Fails Positions. As described above, the CNS Fails Charge would be determined based on the amount of time that a fails position remains outstanding which would be more commensurate with the risk of such positions and provide a greater incentive to timely deliver settlement obligations. Therefore, NSCC believes the coverage of its credit exposures to its Members through the CNS Fails Charge is consistent with Rule 17ad-22(e)(6)(i) under the Act.

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

NSCC believes that the proposed rule change could have an impact on competition. The proposed rule change could burden competition because it could result in increased margin charges for certain Members and a decrease for others depending on their individual portfolios and their CNS Fails Positions. When the proposed rule change results in a larger Required Fund Deposit, the proposed change could burden competition for Members that have lower operating

¹³ 17 CFR 240.17ad-22(e)(6)(i).

margins or higher costs of capital compared to other Members. NSCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the Act.¹⁴ NSCC believes that the CNS Fails Charge is necessary for NSCC to limit its exposures to potential losses from defaults by Members with CNS Fails Positions. Additionally, NSCC believes that the proposed changes to the CNS Fails Charge are appropriate because the charge would be imposed on Members on an individualized basis and is reasonably calculated based on the amount of time that the fails remain outstanding as well as the risks posed to NSCC by the Members' CNS Fails Positions. In addition, the increase in Required Fund Deposit would be in direct relation to the specific risks presented by each Member's Net Unsettled Positions, and each Member's Required Fund Deposit would continue to be calculated with the same parameters and at the same confidence level for each Member. Therefore, Members that present similar Net Unsettled Positions, regardless of the type of Member, would have similar impacts on their Required Fund Deposit amounts. Therefore, NSCC believes any burden on competition imposed by the CNS Fails Charge would be necessary and appropriate in furtherance of the Act in order to limit NSCC's exposures to the risks being mitigated by such charge.

(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 by NSCC, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

¹⁴ 15 U.S.C. 78q-1(b)(3)(I).

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 a comments, available at www.sec.gov/rules-regulations/how-submit-comment. 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 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NSCC-2025-013 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-2025-013. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of NSCC and on DTCC's website (www.dtcc.com/legal/sec-rule-filings). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material

that is obscene or subject to copyright protection. All submissions should refer to File Number SR-NSCC-2025-013 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,

Assistant Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).