

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81774; File No. SR-NSCC-2017-015)

September 29, 2017

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change to Amend and Clarify a Margin Charge Relating to CNS Fails Positions

On August 11, 2017, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-NSCC-2017-015, 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 August 24, 2017.³ The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description of the Proposed Rule Change

NSCC proposed to change its Rules & Procedures (“Rules”)⁴ to (1) amend an existing fails charge (“CNS Fails Charge”) that applies to each NSCC member (“Member”) as part of each Member’s required deposit (“Required Deposit”)⁵ to the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 81439 (August 18, 2017), 82 FR 40176 (August 24, 2017) (SR-NSCC-2017-015) (“Notice”).

⁴ Available at <http://www.dtcc.com/en/legal/rules-and-procedures>.

⁵ A Member’s Required Deposit is the daily margin deposit that Members are required to make to NSCC’s clearing fund (“Clearing Fund”). Additional information on Required Deposits and the Clearing Fund can be found in NSCC’s Rules. Id.

NSCC Clearing Fund; and (2) clarify NSCC’s current practices with respect to the assessment and collection of the CNS Fails Charge.⁶

A. The Required Deposit and the CNS Fails Charge

NSCC collects Required Deposits from all Members in order to mitigate potential losses to NSCC associated with the liquidation of a Member’s portfolio, if NSCC ceases to act for such Member.⁷ In order to calculate each Member’s Required Deposit, NSCC uses a risk-based margin methodology comprised of a number of risk-based component charges, including the CNS Fails Charge.⁸

NSCC currently calculates and collects the CNS Fails Charge from Members with positions that did not settle on the applicable settlement date (“Settlement Date”)⁹ (“CNS Fails Positions”).¹⁰ According to NSCC, NSCC imposes the CNS Fails Charge based on the Member’s credit rating, as derived from NSCC’s internal credit risk analysis (i.e., the Credit Risk Rating Matrix or “CRRM”),¹¹ in order to reflect the potential increase in

⁶ Notice, 82 FR at 40176.

⁷ When NSCC restricts a Member’s access to services generally, NSCC is said to have “ceased to act” for the Member. Rule 46 (Restrictions on Access to Services) of the Rules sets out the circumstances under which NSCC may cease to act for a Member and the types of actions that NSCC may take. Rules, supra note 4.

⁸ Notice, 82 FR at 40176.

⁹ The Settlement Date refers to the standard settlement cycle, as set by the U.S. Securities and Exchange Commission, which is T+2. See Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564 (March 29, 2017).

¹⁰ Notice, 82 FR at 40176.

¹¹ The CRRM is a tool to help measure the credit risk that Members pose to NSCC. See Securities Exchange Act Release No. 80734 (May 19, 2017), 82 FR 24177 (May 25, 2017) (SR-FICC-2017-006). The CRRM produces a rating based on a

credit risk from Members with a higher risk of default.¹² NSCC is exposed to credit and market risks when a Member does not satisfy its obligation to either pay its net settlement proceeds or deliver its securities due by the applicable Settlement Date.¹³ Such exposures generally increase when the Member’s risk of default increases, as reflected by the Member’s credit rating derived from the CRRM.¹⁴ Therefore, NSCC asserts that to reduce NSCC’s credit risk exposures and to incentivize Members to satisfy their obligations relating to their outstanding trades on Settlement Date, NSCC collects the CNS Fails Charge as part of each Member’s Required Deposit.¹⁵

This proposed rule change would amend the Rules regarding the CNS Fails Charge. Specifically, the proposed rule change would amend the Rules to add transparency and clarify NSCC’s current practices with respect to the assessment and collection of this existing daily margin charge.¹⁶

scale from 1 (the strongest) to 7 (the weakest). Id. Members that fall within the weakest three rating categories (i.e., 5, 6, and 7) are placed on NSCC’s “Watch List” and may be subject to enhanced surveillance or additional margin charges. Id. The CRRM considers factors that are designed to collectively reflect the financial and operational condition of a Member. Id. These factors include (i) quantitative factors, such as capital, assets, earnings, and liquidity; and (ii) qualitative factors, such as management quality, market position/environment, and capital and liquidity risk management. Id.

¹² Notice, 82 FR at 40176.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

B. Calculation of the CNS Fails Charge

Currently, for a Member with CNS Fails Positions, the CNS Fails Charge is calculated by multiplying the current market value of such Member's aggregate CNS Fails Positions by a percentage determined by the Member's CRRM rating.¹⁷ For a Member that is rated 1 through 4 on the CRRM, the CNS Fails Charge is 5 percent of the Member's aggregate CNS Fails Positions.¹⁸ For a Member that is rated 5 or 6 on the CRRM, the CNS Fails Charge is 10 percent of the Member's aggregate CNS Fails Positions.¹⁹ For a Member that is rated 7 on the CRRM, NSCC charges 20 percent of the Member's aggregate CNS Fails Positions.²⁰

NSCC explains that of the 20 percent charge, 10 percent is imposed pursuant to Procedure XV, Section I.(A)(1)(f) of the Rules, which describes NSCC's current CNS Fail Charge,²¹ while the remaining 10 percent of the charge is imposed pursuant to Procedure XV, Section I.(B)(1) of the Rules, which authorizes NSCC's to require Members on the Watch List to make additional Clearing Fund deposits as determined by NSCC.²² To clarify NSCC's current practices with respect to the assessment and collection of the CNS Fails Charge in the Rules, NSCC proposes to amend the Rules to

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Notice, 82 FR at 40177.

clearly state that, for any Member that is rated 7 on the CRRM, the CNS Fails Charge would be 20 percent of the Member's aggregate CNS Fails Positions.²³

C. Detailed Description of the Proposed Rule Changes

To effectuate the proposed change, NSCC proposes to amend Rule 1 of the Rules²⁴ to add a definition for CNS Fails Position. The proposed definition would provide that the term "CNS Fails Position" means either a Long Position or a Short Position that did not settle on the Settlement Date.²⁵ NSCC is also proposing to amend Procedure XV, Section I.(A)(1)(f) of the Rules to provide that a Member's Clearing Fund contribution shall include an amount that is calculated by multiplying the current market value for such Member's aggregate CNS Fails Positions by (i) 5 percent for Members rated 1 through 4 on the CRRM; (ii) 10 percent for Members rated 5 or 6 on the CRRM; or (iii) 20 percent for Members rated 7 on the CRRM.²⁶

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act²⁷ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission believes the proposal is consistent with

²³ Id. NSCC states that Members which are not rated by the CRRM are not subject to the CNS Fails Charge; however, these Members can be placed on the Watch List as deemed necessary by NSCC to protect itself and its Members. Id.

²⁴ Rules, supra note 4.

²⁵ Notice, 82 FR at 40176.

²⁶ Id.

²⁷ 15 U.S.C. 78s(b)(2)(C).

Act, specifically Section 17A(b)(3)(F) of the Act and Rule 17Ad-22(e)(23)(i)²⁸ under the Act, as discussed below.

A. Consistency with Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act, requires, in part, that NSCC's Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.²⁹

The proposed rule change would clarify and provide additional transparency to NSCC members regarding NSCC's current practices surrounding the assessment and collection of the CNS Fails Charges associated with each Member. Specifically, the proposed Rule would clearly state that Members with a CRRM rating of 7 are charged 20 percent of the Member's aggregate CNS Fails Positions (instead of the less transparent approach of charging 10 percent pursuant to the CNS Fails Charge and 10 pursuant to a separate Watch List charge). By doing so, this proposed rule change would help the Rules to be more transparent, accurate, and clear, which would better enable Members to understand their respective rights and obligations with respect to their NSCC membership and, in turn, support NSCC's clearance and settlement of securities transactions. Therefore, the Commission believes that the proposed rule change related to the CNS Fails Charge would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.³⁰

²⁸ 15 U.S.C. 78q-1(b)(3)(F); 17 CFR 240.17Ad-22(e)(23)(i).

²⁹ 15 U.S.C. 78q-1(b)(3)(F).

³⁰ Id.

B. Consistency with Rule 17Ad-22(e)(23)(i)

Rule 17Ad-22(e)(23)(i) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures.³¹

As described above, the proposed rule change seeks to clarify in NSCC's Rules the current practices with respect to the assessment and collection of the CNS Fails Charge. Specifically, NSCC proposes to amend the Rules to include a definition for CNS Fails Position and clearly state NSCC's current practices regarding the assessment and collection of the CNS Fails Charge, including the percentages that NSCC charges Members according to their CRRM rating. In doing so, the Commission believes that proposed rule change would help promote disclosure of relevant rules and material procedures relating to the CNS Fails Charge, consistent with Rule 17Ad-22(e)(23)(i) under the Act.³²

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act³³ and the rules and regulations thereunder.

³¹ 17 CFR 240.17Ad-22(e)(23)(i).

³² Id.

³³ 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR-NSCC-2017-015 be, and hereby is, APPROVED.³⁴

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

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Assistant Secretary

³⁴ In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³⁵ 17 CFR 200.30-3(a)(12).