

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93532; File No. SR-NSCC-2021-010)

November 5, 2021

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Establish the Securities Financing Transaction Clearing Service and Make Other Changes

I. Introduction

On July 22, 2021, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-NSCC-2021-010 (“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 August 12, 2021.³ The Commission has received comment letters on the Proposed Rule Change.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 92570 (August 5, 2021), 86 Fed. Reg. 44482 (August 12, 2021) (SR-NSCC-2021-010) (“Notice”). NSCC also filed the proposal contained in the Proposed Rule Change as advance notice SR-NSCC-2021-803 (“Advance Notice”) with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”). 12 U.S.C. 5465(e)(1); 17 CFR 240.19b-4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the Federal Register on August 12, 2021. Securities Exchange Act Release No. 92568 (August 5, 2021), 86 Fed. Reg. 44530 (August 12, 2021) (SR-NSCC-2021-803). The proposal contained in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

⁴ Comment letters are available at <https://www.sec.gov/comments/sr-nsc-2021-010/srnscc2021010.htm>

On September 2, 2021, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve, disapprove, or institute proceedings 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

As described in the Notice,⁸ NSCC proposes to (i) establish the securities financing transaction clearing service (“SFT Clearing Service”) to make central clearing available at NSCC for equity securities financing transactions, which are, broadly speaking, transactions where the parties exchange equity securities against cash and simultaneously agree to exchange the same securities and cash, plus or minus a rate payment, on a future date (collectively, “SFTs”), (ii) establish new membership categories and requirements for sponsoring members and sponsored members whereby existing Members would be permitted to sponsor certain institutional firms into membership, (iii) establish a new membership category and requirements for agent

⁵ 15 U.S.C. 78s(b)(2).

⁶ Securities Exchange Act Release No. 92860 (September 2, 2021), 86 Fed. Reg. 50569 (September 9, 2021) (SR-NSCC-2021-010).

⁷ 15 U.S.C. 78s(b)(2)(B).

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 NSCC’s Rules & Procedures, available at www.dtcc.com/~media/Files/Downloads/legal/rules/nscc_rules.pdf, and the Notice.

clearing members whereby existing Members would be permitted to submit, on behalf of their customers, transactions to NSCC for novation, and (iv) make other amendments and clarifications to the Rules, as described in greater detail below.

(i) Key Parameters of the Proposed SFT Clearing Service

NSCC proposes central clearing for SFTs with a one business day term in eligible equity securities that are entered into by Members, Sponsored Members that are sponsored into NSCC by Sponsoring Members (as described below), or Agent Clearing Members on behalf of Customers (as described below). NSCC will maintain eligibility criteria for the securities that may underlie an SFT that NSCC will accept for novation. NSCC would, as an initial matter, provide the proposed SFT Clearing Service for only those SFTs where the underlying securities are CNS-eligible equity securities that have a per share price of \$5 or more, although NSCC may modify eligible equity at a later date.

The final settlement obligations of each SFT, other than a Sponsored Member transaction, that is novated to NSCC would settle receive-versus-payment/delivery-versus-payment at The Depository Trust Company (“DTC”). SFT deliver orders would be processed in accordance with DTC’s rules and procedures, including provisions relating to risk controls. DTC would accept delivery instructions for an SFT from NSCC, as agent for DTC participants that are SFT Members.⁹

⁹ On July 22, 2021, DTC submitted a proposed rule change to provide DTC participants that are also NSCC Members with settlement services in connection with NSCC’s proposed SFT Clearing Service. See Securities Exchange Act Release No. 92572 (August 5, 2021), 86 Fed. Reg. 44077 (August 11, 2021) (SR-DTC-2021-014).

A securities lender would have the right to submit a recall notice to NSCC in respect of a novated SFT for which Final Settlement obligations have not yet been satisfied. If a securities borrower does not return the lent securities by the recall date specified in such notice, the securities lender would be eligible to buy-in, in accordance with such timeframes and deadlines as established by NSCC for such purpose, such securities. Buy-in would allow a securities lender to purchase securities equivalent to the borrowed securities in the market and charge a securities borrower for the cost of this purchase. Similarly, a securities borrower would have the right to accelerate the scheduled final settlement of a novated SFT and return the borrowed securities earlier than the scheduled final settlement and settle the transaction.

SFT activity would be risk managed by NSCC in a manner consistent with Members' CNS positions but would be margined independently of the Member's CNS positions. NSCC would collect margin (referred to as the Required SFT Deposit) for all SFT activities, subject to a \$250,000 minimum deposit. NSCC would also require an additional premium for non-returned SFTs. In addition, NSCC would require that (i) a minimum of 40% of an SFT Member's margin for SFT consist of a combination of cash and certain treasury securities, and (ii) the lesser of \$5,000,000 or 10% of an SFT Member's margin for SFT (but not less than \$250,000) consist of cash. NSCC would also have the discretion to raise the minimum cash deposit required.

In a case of an SFT Member default, NSCC would be able to delay its satisfaction of final settlement obligations to non-defaulting SFT Members beyond the normal settlement cycle for the purchase or sale of securities to the extent NSCC determines that taking market action to close-out some or all of the defaulted SFT Member's novated

SFT Positions would create a disorderly market in the relevant SFT Securities. In such a situation, non-defaulting SFT Members would not be able to effect a recall or an associated buy-in or accelerate the delayed final settlement obligations. During any such delay, NSCC would continue paying to and receiving from non-defaulting SFT Members the payment for the change in market value of the securities with respect to their novated SFTs.

(ii) Sponsoring Members and Sponsored Members

NSCC would establish a sponsored membership program to allow Members to serve as the pre-novation counterparty and credit intermediary for their institutional firm clients in clearing. Under the proposal, all Members would be eligible to apply to become Sponsoring Members in NSCC, subject to specified credit criteria. A Member whose application to become a Sponsoring Member has been approved would be permitted to sponsor their institutional firm clients into membership as Sponsored Members. Such Sponsoring Members would then be able to facilitate their institutional firm clients' cleared activity, and such transactions would be eligible for novation to NSCC.

A Sponsoring Member would be responsible for (i) submitting data on its Sponsored Members' SFTs to NSCC or appointing a third-party approved SFT submitter to do so, (ii) posting to NSCC margins associated with the SFT activity of its Sponsored Members, (iii) providing an unconditional guaranty to NSCC for its Sponsored Members' final settlement and other obligations to NSCC, and (iv) covering any default loss allocable to its Sponsored Members.

(iii) Agent Clearing Members and Customers

NSCC would establish an agent clearing membership designed to allow Members to serve as agent and credit intermediary for their institutional firm clients in clearing. Under the proposal, a Member that becomes an Agent Clearing Member would be permitted to submit SFTs executed by it as agent on behalf of its institutional firm clients as Customers. All Members would be eligible to apply to become Agent Clearing Members in NSCC subject to specified credit criteria and an activity limit. An Agent Clearing Member would be responsible for posting to NSCC margins associated with the activity of its Customers and covering any default loss allocable to its Customers; however, unlike a Sponsoring Member, an Agent Clearing Member would not be required to provide an unconditional guaranty to NSCC for its Customers' obligations.

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 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.

¹⁰ 15 U.S.C. 78s(b)(2)(B).

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 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)(7)(i) under the Act,¹⁴ which requires a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable

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)(7)(i).

stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions.

- Rule 17Ad-22(e)(8) under the Act,¹⁵ which requires a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to define the point at which settlement is final to be no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.

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 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,¹⁶ Rule 17Ad-22(e)(7)(i) and (e)(8) under the Act,¹⁷ or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data,

¹⁵ 17 CFR 240.17Ad-22(e)(8).

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ 17 CFR 240.17Ad-22(e)(7)(i) and (e)(8).

and arguments, the Commission will consider, pursuant to Rule 19b-4(g) under the Act,¹⁸ any request for an opportunity to make an oral presentation.¹⁹

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,²⁰ 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-2021-010 on the subject line.

¹⁸ 17 CFR 240.19b-4(g).

¹⁹ Section 19(b)(2) of the Act grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²⁰ See Notice, supra note 3.

Paper Comments:

- 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-2021-010. 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-2021-010 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.²¹

Jill M. Peterson
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(31).