

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99208; File No. SR-NSCC-2023-013)

December 20, 2023

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Addendum A (Fee Structure)

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 December 15, 2023, 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. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder.⁴ 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

NSCC is filing the proposed rule change to modify Addendum A (Fee Structure) (“Addendum A”) of NSCC’s Rules & Procedures (“Rules”) to increase its Clearing Fund Maintenance Fee, as described below.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Rules, available at www.dtcc.com/~media/Files/Downloads/legal/rules/nscc_rules.pdf.

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 purpose of this proposed rule change is to amend Addendum A (Fee Structure) of the Rules to modify NSCC's Clearing Fund Maintenance Fee effective January 1, 2024. The proposed fee change is discussed in detail below.

Background

NSCC's Clearing Fund Maintenance Fee was implemented in 2016 in order to (i) diversify NSCC's revenue sources, mitigating NSCC's dependence on revenues driven by trading volumes and (ii) add a stable revenue source that would contribute to NSCC's operating margin by offsetting increasing costs and expenses.⁶ The fee is charged to all NSCC Members that are required to make deposits to the NSCC Clearing Fund in proportion to the Member's average monthly cash deposit to the Clearing Fund.

⁶ See Securities Exchange Act Release No. 78525 (Aug. 9, 2016), 81 FR 54146 (Aug. 15, 2016) (SR-NSCC-2016-002).

As part of the annual budgeting process, NSCC reviews price levels against its cost of operations and evaluates potential expense reductions and/or fee changes to correct any misalignment of costs and fees. NSCC's fees are cost-based plus a markup as approved by the Board of Directors or management (pursuant to authority delegated by the Board), as applicable. This markup is applied to recover development costs and operating expenses and to accumulate capital sufficient to meet regulatory and economic requirements.⁷

During the 2024 budgeting process, NSCC identified opportunities to better align fees and costs for NSCC, which were approved by the Businesses, Technology and Operations Committee of the Board of Directors. NSCC anticipates an increase in the cost of funding NSCC's default liquidity resources due to the rising interest rate environment, which would constitute the significant majority of the projected increase in NSCC's overall operating expenses. Specifically, two tranches of senior notes issued in 2020 with lower coupon rates are maturing in 2023, and these notes need to be refinanced with new issuances at significantly higher prevailing market rates. As a result, the weighted average rate of NSCC's senior notes portfolio and its related interest expense would increase. NSCC is therefore proposing to increase the Clearing Fund Maintenance Fee to partially offset its increasing cost of default liquidity resources.

⁷ NSCC maintains procedures to control costs and regularly review pricing levels against costs of operation. See NSCC Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures, available at www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/NSCC_Disclosure_Framework.pdf, at 124.

Proposed Fee Changes

Pursuant to Section V.F of Addendum A, NSCC charges a Clearing Fund Maintenance Fee, which is a monthly fee calculated, in arrears, as the product of (A) 0.25% and (B) the average of each Member's (or Limited Member's, if applicable) cash deposit balance in the Clearing Fund, as of the end of each day, for the month, multiplied by the number of days for that month and divided by 360. Based on its annual budgeting review, NSCC proposes to increase the rate used to calculate the Clearing Fund Maintenance Fee by 10 basis points from 0.25% to 0.35%. To effectuate the proposed fee change, NSCC would amend Section V.F. of Addendum A concerning the Clearing Fund Maintenance Fee to reflect the new calculation rate of 0.35%. NSCC would also remove the reference to Limited Members in the Clearing Fund Maintenance Fee description because Limited Members are no longer required to maintain Clearing Fund deposits at NSCC and therefore the Clearing Fund Maintenance Fee no longer applies to Limited Members.⁸

Expected Member Impact

The proposed rule change would result in increased Clearing Fund Maintenance Fees for NSCC Members, the impact of which would vary based on each Member's average monthly cash deposit to the Clearing Fund. Taken alone, the proposed rule

⁸ In December 2021, NSCC adopted a proposed rule change to (i) remove the requirement that Members and Mutual Fund/Insurance Services Members pay a Mutual Fund Deposit into the Clearing Fund relating to Mutual Fund Services, (ii) remove provisions relating to the Mutual Fund Deposit and the Insurance Deposit and (iii) remove a provision relating to establishing a Clearing Fund requirement for NSCC Members that currently do not have a Clearing Fund requirement. See Securities Exchange Act Release No. 93722 (Dec. 6, 2021), 86 FR 70548 (Dec. 10, 2021) (SR-NSCC-2021-015).

change could be expected to result in an increase of approximately \$9 million in fee revenue. However, NSCC notes that while the Clearing Fund Maintenance Fee is being increased, NSCC also anticipates that average Clearing Fund balances would be reduced following the implementation of the T+1 settlement cycle in May 2024.⁹ As a result, the proposed fee change is expected to increase NSCC's overall annual fee revenue by approximately \$3 million. NSCC projects that over half of its Members would see an increase of less than \$25,000, approximately 29 Members would see increases ranging from \$25,000 - \$100,000, and approximately 20 Members would see an increase of over \$100,000.

Member Outreach

NSCC has conducted ongoing outreach to Members in order to provide them with notice of the proposed changes and the anticipated impact for the Member. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

Implementation Timeframe

NSCC would implement this proposal on January 1, 2024. As proposed, a legend would be added to Addendum A stating there are changes that became effective upon

⁹ See Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (S7-05-22) (Shortening the Securities Transaction Settlement Cycle). For example, NSCC analysis suggests that the aggregate volatility component of NSCC's margin calculation could potentially be reduced by 41% by a move to a T+1 settlement cycle. See DTCC White Paper, *Advancing Together: Leading the Industry to Accelerated Settlement* (February 2021), available at www.dtcc.com/-/media/Files/PDFs/White%20Paper/DTCC-Accelerated-Settle-WP-2021.pdf.

filing with the Commission but have not yet been implemented. The proposed legend also would include the date on which such changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would automatically be removed.

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. Specifically, NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act¹⁰ and Rule 17Ad-22(e)(23)(ii)¹¹ thereunder for the reasons set forth below.

Section 17A(b)(3)(D) of the Act¹² requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. NSCC believes the proposed fee is reasonable and would be allocated equitably among its full-service Members. Because the proposed changes do not alter how the Clearing Fund Maintenance Fee is currently allocated (i.e., charged) to Members, NSCC believes the fee would continue to be equitably allocated. More specifically, as mentioned above, the Clearing Fund Maintenance Fee is and would continue to be charged to all Members in proportion to the Member's average monthly cash deposit to the Clearing Fund. As such, and as is currently the case, Members that make greater use of NSCC's guaranteed services or which have activity in those services

¹⁰ 15 U.S.C. 78q-1(b)(3)(D).

¹¹ 17 CFR 240.17Ad-22(e)(23)(ii).

¹² 15 U.S.C. 78q-1(b)(3)(D).

that present greater risk to NSCC would generally be subject to a larger Clearing Fund Maintenance Fee because such Members would typically be required to maintain larger Clearing Fund deposits pursuant to the Rules.¹³

NSCC also believes that the Clearing Fund Maintenance Fee would continue to be a reasonable fee under the described changes. As described above, the Clearing Fund Maintenance Fee was implemented in 2016 in order to (i) diversify NSCC's revenue sources, mitigating NSCC's dependence on revenues driven by trading volumes and (ii) add a stable revenue source that would contribute to NSCC's operating margin by offsetting increasing costs and expenses. NSCC proposes to adopt a 10 basis point increase in the fee to help offset increased costs funding NSCC's default liquidity resources due to the rising interest rate environment. As noted above, the net interest carry on NSCC's medium term notes is projected to decline next year as legacy senior notes mature and are refinanced at higher prevailing market rates. For this reason, NSCC believes the proposed changes to the Clearing Fund Maintenance Fee are reasonable.

Rule 17Ad-22(e)(23)(ii) under the Act¹⁴ requires NSCC to 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. The proposed fees would be clearly and transparently published in Addendum A of the Rules, which are available on a public website,¹⁵ thereby enabling Members to identify the fees

¹³ See Rule 4 and Procedure XV, supra note 5.

¹⁴ 17 CFR 240.17Ad-22(e)(23)(ii).

¹⁵ See supra note 5.

and costs associated with participating in NSCC. As such, NSCC believes the proposed rule change is consistent with Rule 17Ad-22(e)(23)(ii) under the Act.¹⁶

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

NSCC does not believe that the changes to the Clearing Fund Maintenance Fee would impose any burden on competition. The Clearing Fund Maintenance Fee is charged ratably based on each Members' use of NSCC's guaranteed services, as reflected in Members' cash deposits to the Clearing Fund. Thus, the fee is designed to be reflective of each Member's individual activity at NSCC. While Member's may experience some impact from the increase in fees, NSCC notes that average Clearing Fund balances would also be reduced following the implementation of the T+1 settlement cycle in May 2024, offsetting some of this impact.¹⁷ NSCC believes the proposed fee change would not unfairly inhibit access to NSCC's services by any Member. NSCC therefore believes the proposed rule change would have a minimal impact on Members and would not impose any burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NSCC has conducted outreach to Members to provide them with notice of the proposed fees.

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, NSCC will amend this filing to publicly file such comments 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

¹⁶ 17 CFR 240.17Ad-22(e)(23)(ii).

¹⁷ See supra note 9.

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 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 or 202-551-5777.

NSCC reserves the right not to respond to any comments received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹⁸ of the Act and paragraph (f)¹⁹ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

- Send an email to rule-comments@sec.gov. Please include file number SR-NSCC-2023-013 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-2023-013. 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 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 a.m. and 3 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 (<https://dtcc.com/legal/sec-rule-filings.aspx>). 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-2023-013 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.²⁰

Christina Z. Milnor,
Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).