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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-91809; File No. SR-NSCC-2021-005]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Increase the National Securities Clearing Corporation's Minimum Required Fund Deposit

May 10, 2021.

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 April 26, 2021, 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 modifications to NSCC's Rules & Procedures ("Rules")[3] in order to increase the minimum Required Fund Deposit for each Member.

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

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Capitalized terms not defined herein are defined in the Rules, available at https://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.

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

NSCC is proposing to increase the minimum Required Fund Deposit, as described in greater detail below.

The Minimum Required Fund Deposit

As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Fund Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.[4] The Required Fund Deposit serves as each Member's margin. The objective of a Member's Required Fund Deposit is to mitigate potential losses to NSCC associated with liquidation of the Member's portfolio in the event NSCC ceases to act for that Member (hereinafter referred to as a "default").[5] The aggregate of all Members' Required Fund Deposits, together with certain other deposits required under the Rules, constitutes the Clearing Fund of NSCC, which it would access, among other instances, 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.

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4 See Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) ("Procedure XV"), supra note 3. 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).

5 The Rules identify when NSCC may cease to act for a Member and the types of actions NSCC may take. For example, NSCC may suspend a firm's membership with NSCC or prohibit or limit a Member's access to NSCC's services in the event that Member defaults on a financial or other obligation to NSCC. See Rule 46 (Restrictions on Access to Services) of the Rules, supra note 3.

Pursuant to the Rules, each Member's Required Fund Deposit amount consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV.[6] Currently, each Member is required to maintain a minimum Required Fund Deposit amount of $10,000.[7] If a Member's Required Fund Deposit, as calculated by Procedure XV, is less than $10,000 on a given day, NSCC requires a deposit to bring the Member's Required Fund Deposit up to $10,000. The first 40% of a Member's Required Fund Deposit, but no less than the minimum Required Fund Deposit amount of $10,000, is required to be in cash.[8]

NSCC's margining methodologies are designed to mitigate market, liquidity and other risks. 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 regular reviews, NSCC has determined that there are circumstances where the current minimum Required Fund Deposit amount is insufficient to manage NSCC's risk in the event of an abrupt or sudden increase in a Member's activity.

NSCC employs daily backtesting to determine the adequacy of each Member's Required Fund Deposit.[9] NSCC compares the Required Fund Deposit[10] for each Member

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6 Procedure XV, supra note 3.

7 Section 1 of Rule 4, supra note 3.

8 Section II.(A) of Procedure XV, supra note 3.

9 See Model Risk Management Framework ("Model Risk Management Framework"), Securities Exchange Act Release No.81485 (August 25, 2017), 82 FR 41433 (August 31, 2017) (NSCC-2017-008) (sets forth the model risk management practices of NSCC and states that Value at Risk ("VaR") and Clearing Fund requirement coverage backtesting would be performed on a daily basis or more frequently) and Securities Exchange Act Release No. 84458 (October 19, 2018), 83 FR 53925 (October 25, 2018) (File No. SR-NSCC-2018-009) (amends the Model Risk Management Framework).

10 Members may be required to post additional collateral to the Clearing Fund in addition to their Required Fund Deposit amount. See e.g, Rule 15 (Assurance of

with the simulated liquidation gains/losses using the actual positions in the Member's portfolio, and the actual historical security returns. A backtesting deficiency occurs when NSCC determines that a Member's Required Fund Deposit would not have been adequate to address the projected liquidation losses estimated from a Member's settlement activity based on the backtesting results. NSCC investigates the cause(s) of any backtesting deficiencies. As a part of this investigation, NSCC pays particular attention to Members with backtesting deficiencies that bring the results for that Member below the 99% confidence target (i.e., greater than two backtesting deficiency days in a rolling twelve-month period) to determine if there is an identifiable cause of repeat backtesting deficiencies.[11] NSCC also evaluates whether multiple Members may experience backtesting deficiencies for the same underlying reason. Backtesting deficiencies highlight exposure that could subject NSCC to potential losses under normal market conditions in the event that a Member defaults.

While multiple factors may contribute to a Member's backtesting deficiency, a position increase by a Member after the calculation of such Member's Required Fund Deposit may be a factor that leads to the Member incurring backtesting deficiencies due to the additional exposure that is not mitigated until the collection of the Required Fund Deposit occurs intraday, or on the next business day. This factor is heightened for those

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Financial Responsibility and Operational Capability), supra note 3 (providing that adequate assurances of financial responsibility of a Member may be required, such as increased Clearing Fund deposits). For backtesting comparisons, NSCC uses the Required Fund Deposit amount, without regard to the actual, total collateral posted by the Member to the Clearing Fund.

[11] The 99% confidence target is consistent with Rule 17Ad-22(e)(6)(iii) which requires NSCC to calculate margin to cover its "potential future exposure" which is defined in Rule 17Ad-22(a)(13) to mean the "maximum exposure estimated to occur at a future point in time with an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure." 17 CFR 240.17Ad-22(a)(13), (e)(6)(iii).

Members that maintain a low or minimum Required Fund Deposit because there are less deposits to mitigate the additional exposure caused by a position increase.

Typical examples where Members may be maintaining a minimum Required Fund Deposit amount of $10,000 include (1) when a new Member has activated its clearing accounts at NSCC and is growing its business; (2) when a Member generally has limited or infrequent transaction activity; and (3) when a Member is winding down its business and is in the process of retiring its NSCC membership. In each of these circumstances, an abrupt increase in clearing activity following a period of low or no clearing activity could cause NSCC to be under-margined with respect to the Member and may result in backtesting deficiencies. Therefore, NSCC is proposing to increase the minimum Required Fund Deposit amount of $10,000 to address the risk that NSCC becomes under-margined in circumstances when a Member is subject to the current minimum Required Fund Deposit amount. As discussed below, NSCC has observed that Members that maintain a Required Fund Deposit of less than $250,000 disproportionately account for the number of Members with a confidence target below 99% due to repeat backtesting deficiencies.

In determining the appropriate minimum Required Fund Deposit amount, NSCC reviewed varying minimum Required Fund Deposit amounts to determine the anticipated effects of increasing the minimum Required Fund Deposits on Clearing Fund coverage and on backtesting results. NSCC also conducted a review of minimum deposit requirements of registered clearing agencies and foreign central counterparty clearing houses ("CCPs") to compare NSCC's minimum Required Fund Deposit with the deposits required by registered clearing agencies and foreign CCPs. As discussed below, based on the results of the reviews and the comparison of other registered clearing agencies and foreign CCPs, NSCC believes that a proposed minimum Required Fund Deposit amount

of $250,000 would provide an appropriate balance of improving Member backtesting results and NSCC's Clearing Fund coverage, while minimizing the impact to Members.

NSCC conducted a review of backtesting deficiencies during the period from June 3, 2019 to May 29, 2020 ("Impact Study Period") to determine the anticipated backtesting coverage using $250,000 as the minimum Required Fund Deposit amount and amounts lower and higher than $250,000. The results of the reviews indicated that using $250,000 as its minimum Required Fund Deposit amount would improve NSCC's rolling twelve-month Clearing Fund coverage and reduce the number of Members with backtesting coverage below 99%.[12] Based on a review of backtesting deficiencies during the Impact Study Period, approximately 22% of backtesting deficiencies occurred with Members that maintained a Required Fund Deposit of less than $250,000. In addition, those Members that maintained a Required Fund Deposit of less than $250,000 had a disproportionate amount of repeat backtesting deficiencies and were more likely to have backtesting coverage below the 99% confidence target. During the Impact Study Period, 29 Members fell below the 99% confidence target. Deficiencies that occurred for Members with a Required Fund Deposit lower than $250,000 accounted for 22% of the total backtesting deficiencies, while Members that maintained a Required Fund Deposit lower than $250,000 constituted approximately 45% of the Members that fell below the 99% confidence target. If the proposed changes had been in place, those Members would

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[12] Backtesting percentages indicate the risk that a minimum Required Fund Deposit will be insufficient to manage risk in the event of a Member's default. A backtesting coverage that is below the 99% confidence target for a Member means that the Member has more than two backtesting deficiency days in a rolling twelve-month period. As indicated above, consistent with Rule 17Ad-22(e)(6)(iii), NSCC pays particular attention to Members with backtesting deficiencies that bring the results for that Member below the 99% confidence target to determine if there is an identifiable cause of repeat backtesting deficiencies. See supra note 9.

constitute only 27% of Members that fell below the 99% confidence target which is comparable to those Members' overall representation as a class. Approximately 88% of the deficiencies that occurred on the days when Members maintained a Required Fund Deposit of less than $250,000 would have been eliminated during that period if the Required Fund Deposit were $250,000 or higher. During the Impact Study Period, NSCC observed a total of 227 backtesting deficiencies. If a minimum requirement of $250,000 had been assessed, 44 deficiencies would have been eliminated across 13 Members. Overall a $250,000 minimum requirement would have increased NSCC's twelve-month coverage by 0.14% to 99.41%, eliminated 44 deficiencies, improved rolling twelve-month coverage for 7 Members to above 99% compared to 5 Members if a $100,000 minimum Required Fund Deposit had been applied, and improved the rolling twelve-month coverage for 6 additional Members. The review of backtesting deficiencies during the Impact Study Period also indicated that raising the minimum Required Fund Deposit to $250,000 would decrease backtesting deficiencies to a greater extent than raising it to a lower amount such as $100,000 and would increase the Clearing Fund coverage to a greater extent[13].

NSCC's review of the requirements of other clearing agencies and foreign CCPs indicated that NSCC's minimum Required Fund Deposit requirement of $10,000 was significantly lower than minimum deposits or equivalent required by such other entities.[14]

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13 Over the Impact Study Period, if the minimum Required Fund Deposit had been set to $250,000 compared to $100,000, there would have been 10 more backtesting deficiencies eliminated; overall increasing the 12-month backtesting coverage percentage by 0.03% to 99.41%.

14 For example, the minimum initial contribution for The Options Clearing Corporation ("OCC") is $500,000. See Rule 1002(d) of the OCC Rules, available at https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_rules.pdf. The minimum Required Fund Deposit for both the Government Securities Division ("GSD") and Mortgage-Backed Securities Division ("MBSD") of Fixed Income Clearing Corporation ("FICC") is $100,000. See Rule 4 of FICC GSD Rulebook, available at

While the minimum required fund deposits of such other entities is not dispositive as to the risk borne by NSCC or the proper fund deposit amounts to offset such risk, it is indicative of the amounts that users of other similarly situated entities can expect to pay as a minimum required fund deposit to use the services of the clearing agencies and foreign CCPs and the impact to such users. The comparison shows that entities using other clearing agencies and foreign CCPs pay significantly more in minimum fund deposits to use similar services than the minimum Required Fund Deposit amount at NSCC.

Based on the backtesting results discussed above and the impact to Members of raising the minimum Required Fund Deposit amount to $250,000, NSCC believes that raising it to $250,000 is the appropriate minimum Required Fund Deposit amount that will minimize the financial impact to its Members while maximizing risk management of activity that is guaranteed at the point of validation or comparison by NSCC.

As is currently provided for in the Rules, NSCC is proposing to continue to require that Members deposit an amount equal to the minimum Required Fund Deposit in cash.[15] NSCC permits Members to satisfy their Required Fund Deposit obligations through a combination of cash and open account indebtedness secured by Eligible Clearing Fund Securities.[16] Cash deposits are fungible. NSCC would be therefore be further strengthening its liquidity resources by requiring each Member to deposit a baseline of $250,000 in cash to the Clearing Fund.

Proposed Rule Changes

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http://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf and Rule 4 of the FICC MBSD Clearing Rules, available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf

15 Section II.(A) of Procedure XV, supra note 3.

16 Rule 4, Section 1, supra note 3.

In order to implement the proposed increase in the minimum Required Fund Deposit amount to $250,000, Section 1 of Rule 4 would be revised to state that the minimum Required Fund Deposit for each Member shall be $250,000. In addition, Section II.(A) of Procedure XV would be revised to replace the minimum contribution amount from $10,000 to $250,000. Section II.(A) of Procedure XV currently provides that no less than $10,000, the minimum Required Fund Deposit, of a Member's Required Fund Deposit must be in cash.[17] To reflect the increase in the minimum Required Fund Deposit, NSCC would also increase the minimum cash requirement to $250,000 to match the proposed increased minimum Required Fund Deposit amount.

Implementation Timeframe

NSCC would implement the proposed changes no later than 20 Business Days after the approval of the proposed rule change by the Commission. NSCC would announce the effective date of the proposed changes by Important Notice posted to its website.

2. Statutory Basis

NSCC believes that the proposed changes described above are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act,[18] and Rules 17Ad-22(e)(4)(i) and (e)(6)(iii), each promulgated under the Act,[19] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of NSCC be designed to, among other things, assure the safeguarding of securities and funds which are in the

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17 Section II.(A) of Procedure XV, supra note 3.

18 15 U.S.C. 78q-1(b)(3)(F).

19 17 CFR 240.17Ad-22(e)(4)(i), (e)(6)(iii).

custody or control of the clearing agency or for which it is responsible.[20] NSCC believes the proposed changes are designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible because they are designed to enable NSCC to require the necessary margin for Members who maintain a minimum Required Fund Deposit to limit its exposure to such Members in the event of a Member default. Having adequate margin for such Members would help ensure that NSCC does not need to use its own resources, or the Eligible Clearing Fund Securities and funds of non-defaulting Members, to cover losses in the event of a default of such Members. Specifically, the proposed rule change seeks to remedy potential situations that are described above where NSCC could be under-margined. By ensuring that Members that maintain the minimum Required Fund Deposit amount are adequately covering NSCC's risk of loss, NSCC would be reducing the risk of losses, which would need to be addressed by using non-defaulting Members' securities or funds, or NSCC funds. In addition, by requiring that Members pay an amount equal to the minimum Required Fund Deposit amount in cash, NSCC would be making available additional collateral that is easier to access upon a Member's default, further reducing the risk of losses and using non-defaulting Members' securities or funds, or NSCC funds. Therefore, NSCC believes the proposed rule change enhances the safeguarding of securities and funds that are in the custody or control of NSCC, consistent with Section 17(b)(3)(F) of the Act.[21]

Rule 17Ad-22(e)(4)(i) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to Members and those arising

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[20] 15 U.S.C. 78q-1(b)(3)(F).

[21] 15 U.S.C. 78q-1(b)(3)(F).

from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each Member fully with a high degree of confidence.[22]

As described above, NSCC believes that the proposed changes would enable it to better identify, measure, monitor, and, through the collection of Members' Required Fund Deposits, manage its credit exposures to Members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence. More specifically, as a review of backtesting deficiencies during the Impact Study Period has indicated, raising the minimum Required Fund Deposit amount to $250,000 would decrease the number of backtesting deficiencies and help ensure that NSCC maintains the coverage of credit exposures for more Members at a confidence level of at least 99%. In addition, by requiring that Members pay an amount equal to the minimum Required Fund Deposit amount in cash, NSCC would be making available collateral that is easier to access when Members default further reducing the risk of losses, which would require using non-defaulting Members' securities or funds, or NSCC funds. Therefore, NSCC believes that the proposed changes would enhance NSCC's ability to effectively identify, measure, monitor and manage its credit exposures and would enhance its ability to maintain sufficient financial resources to cover its credit exposure to each Member fully with a high degree of confidence. As such, NSCC believes the proposed changes are consistent with Rule 17Ad-22(e)(4)(i) under the Act.[23]

Rule 17Ad-22(e)(6)(iii) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its

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22 17 CFR 240.17Ad-22(e)(4)(i).

23 Id.

credit exposures to its Members by establishing a risk-based margin system that, at a minimum, calculates margin sufficient to cover its potential future exposure to Members in the interval between the last margin collection and the close out of positions following a Member default.[24] NSCC employs daily backtesting to determine the adequacy of each Member's Required Fund Deposit paying particular attention to Members that have backtesting deficiencies below the 99% confidence target. Such backtesting deficiencies highlight exposure that could subject NSCC to potential losses if a Member defaults. As discussed above, NSCC has determined that approximately 22% of all backtesting deficiencies occur for those Members that maintain a Required Fund Deposit of less than $250,000 and that approximately 88% of the deficiencies of those Members would have been eliminated during the Impact Study Period if the Required Fund Deposit were $250,000 or higher. By raising the minimum Required Fund Deposit amount to $250,000, NSCC believes it can decrease the backtesting deficiencies by Members, and thus decrease exposure to such Members in the event of a default. NSCC believes that the increase in margin for those Members that currently maintain a Required Fund Deposit of less than $250,000 would improve the probabilities that the margin maintained by such Members is sufficient to cover its potential future exposure to Members in the interval between the last margin collection and the close out of positions following a Member default. Therefore, NSCC believes the proposed change is consistent with Rule 17Ad-22(e)(6)(iii) under the Act.[25]

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

NSCC believes that the proposed changes to increase the minimum Required Fund Deposit could have an impact on competition. Specifically, NSCC believes that the

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[24] 17 CFR 240.17Ad-22(e)(6)(iii).

[25] 17 CFR 240.17Ad-22(e)(6)(iii).

proposed changes could burden competition because they would result in larger Required Fund Deposits for Members in cash that currently have Required Fund Deposits of less than $250,000. The proposed changes could impose more of a burden on those Members that have lower operating margins, lower cash reserves or higher costs of capital compared to other Members. NSCC believes that any burden on competition imposed by the proposed changes would not be significant and would be both necessary and appropriate in furtherance of NSCC's efforts to mitigate risks and meet the requirements of the Act, as described in this filing and further below.

NSCC believes that any burden on competition presented by the proposed changes to increase the minimum Required Fund Deposit amount would not be significant. As discussed above, NSCC believes that the increase to $250,000 is consistent with what users of other similarly situated registered clearing agencies and foreign CCPs are expected to pay as a required deposit for similar services. In addition, by limiting the proposed Required Fund Deposit to $250,000 rather than a higher minimum Required Fund Deposit, NSCC would be minimizing the financial impact to its Members while maximizing risk management of activity that is guaranteed at the point of validation or comparison by NSCC.

While an increase to $100,000 rather than $250,000 would also reduce backtesting deficiencies, it would not reduce it to the same extent as if the minimum Required Fund Deposit were raised to $250,000. If the minimum Required Fund Deposit were raised to $250,000 rather than $100,000, NSCC would have observed 10 more backtesting deficiencies eliminated. If the minimum Required Fund Deposit was increased to $100,000, the 12-month rolling backtesting coverage percentage across NSCC would improve from 99.27% to 99.38%; an increase to $250,000 would improve the coverage to 99.41%. Backtesting deficiencies highlight exposure that could subject NSCC to potential losses under normal market conditions in the event that a Member

defaults. NSCC believes that the additional reduction in exposure that would occur if the minimum Required Fund Deposit were raised to $250,000 rather than $100,000 justifies added expense to the Members who currently have a minimum Required Fund Deposit of less than $250,000.

Even if the burden were deemed significant with respect to certain Members, NSCC believes that the above described burden on competition that may be created by the proposed changes would be necessary in furtherance of the Act, specifically Section 17A(b)(3)(F) of the Act,[26] because, as described above, the Rules must be designed to assure the safeguarding of securities and funds that are in NSCC's custody or control or which it is responsible.

More specifically, NSCC believes these proposed changes are necessary to support NSCC's compliance with Rules 17Ad-22(e)(4)(i) and 17Ad-22(e)(6)(iii) under the Act,[27] which require NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to (x) effectively identify, measure, monitor, and manage its credit exposures to Members and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each Member fully with a high degree of confidence; and (y) cover its credit exposures to its Members by establishing a risk-based margin system that, at a minimum, calculates margin sufficient to cover its potential future exposure to Members in the interval between the last margin collection and the close out of positions following a Member default.

As described above, NSCC believes increasing the minimum Required Fund Deposit amount to $250,000 would decrease the number of backtesting deficiencies and

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[26] 15 U.S.C. 78q-1(b)(3)(F).

[27] 17 CFR 240.17Ad-22(e)(4)(i), (e)(6)(iii).

ensure that NSCC maintains the coverage of credit exposures for more Members at a confidence level of at least 99%. This outcome is consistent with Rule 17Ad-22(e)(6)(iii) which requires that NSCC calculate sufficient margin to cover its "potential future exposure" which is defined as the "maximum exposure estimated to occur at a future point in time with an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure."[28] NSCC also believes that the increase in margin for those Members that currently maintain a Required Fund Deposit of less than $250,000 would help ensure that the margin deposited by such Members is sufficient to cover NSCC's potential future exposure in the interval between the last margin collection and the close out of positions following a Member default. Therefore, NSCC believes that these proposed changes would better limit NSCC's credit exposures to Members, consistent with the requirements of Rules 17Ad-22(e)(4)(i) and Rule 17Ad-22(e)(6)(iii) under the Act.[29]

NSCC believes that the above described burden on competition that could be created by the proposed changes would be appropriate in furtherance of the Act because such changes have been appropriately designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, as described in detail above. The proposal would enable NSCC to produce margin levels more commensurate with the risks it faces as a central counterparty. The increase in minimum Required Fund Deposit would be in relation to the credit exposure risks presented by the class of Members that currently maintain a Required Fund Deposit of less than $250,000, and each Member's Required Fund Deposit would continue to be

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[28] 17 CFR 240.17Ad-22(e)(6)(iii). See also 17 CFR 240.17Ad-22(a)(13) (definition of "potential future exposure").

[29] 17 CFR 240.17Ad-22(e)(4)(i), (e)(6)(iii).

calculated with the same parameters and at the same confidence level for each Member. Therefore, Members that present similar risk, regardless of the type of Member, would have similar impacts on their Required Fund Deposit amounts. In addition, based on the comparison of other registered clearing agencies and foreign CCPs, NSCC believes that the increase to $250,000 is consistent with what users of other similarly situated registered clearing agencies and foreign CCPs are expected to pay and would not be a significant burden on Members. In many cases, other registered clearing agencies and foreign CCPs require greater minimum fund deposit amounts. In addition, based on the results of the review of backtesting deficiencies during the Impact Study Period as discussed above, NSCC believes that a proposed minimum Required Fund Deposit of $250,000 would provide an appropriate balance of improving Member backtesting results and NSCC's Clearing Fund coverage, while minimizing the impact to Members by not raising the minimum Required Fund Deposit above $250,000. Therefore, because the proposed changes are designed to provide NSCC with a more appropriate and complete method of managing the risks presented by each Member and to minimize the impact to Members, NSCC believes the proposal is appropriately designed to meet its risk management goals and its regulatory obligations.

NSCC believes that it has designed the proposed changes in a way that is both necessary and appropriate to meet compliance with its obligations under the Act. Specifically, the proposal to increase the minimum Required Fund Deposit amount to $250,000 would better limit NSCC's credit exposures to its Members. In addition, by continuing to require that Members pay an amount equal to the minimum Required Fund Deposit amount in cash, NSCC would be making available additional collateral that is easier for NSCC to access upon a Member's default, further limiting its credit exposure to Members. Therefore, as described above, NSCC believes the proposed changes are necessary and appropriate in furtherance of NSCC's obligations under the Act,

specifically Section 17A(b)(3)(F) of the Act[30] and Rules 17Ad-22(e)(4)(i) and 17Ad-22(e)(6)(iii) under the Act.[31] For these reasons, the proposed changes are not designed to be an artificial barrier to entry but a necessary and appropriate changes to address specific risk.

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

NSCC conducted Member outreach with each Member that had an average Required Fund Deposit of less than $500,000 for the twelve-month period ending May 2019 to provide notice and an opportunity to discuss the proposed changes. One Member stated that it had an objection to the proposal to raise the minimum Required Fund Deposit from $10,000 to $250,000 and stated that (i) the proposed changes would solely burden the least active and lowest risk firms, (ii) the proposed changes do not have correlation with risk or any appropriate cost allocation at NSCC, (iii) the proposed changes are purely a tax on small firms and NSCC is intent on creating artificial barriers to entry through unjustified capital requirements and (iv) the current policies, procedures and standards are more than adequate to guard against risk at the small firm-level.[32]

First, the proposed changes would not solely burden the least active and lowest risk firms. Members that maintain a minimum Required Fund Deposit of less than $250,000 do include smaller firms and firms that conduct infrequent activity, but they also consist of newer firms that are ramping up activity and firms that are winding down, regardless of size.

Second, the proposed changes are designed to address risk. Backtesting results indicate that deficiencies that occurred for Members with a Required Fund

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30 15 U.S.C. 78q-1(b)(3)(F).

31 17 CFR 240.17Ad-22(e)(4)(i), (e)(6)(iii).

32 The letter sent by the Member also contained comments relating to another proposal that are not addressed herein.

Deposit lower than $250,000 accounted for 22% of the total backtesting deficiencies, while Members that maintained a Required Fund Deposit lower than $250,000 constituted approximately 45% of the Members that fell below the 99% confidence target during the Impact Study Period. If the proposed changes had been in place, those Members would constitute only 27% of Members that fell below the 99% confidence target which is comparable to those Members' overall representation as a class. Backtesting deficiencies indicate a risk that Required Fund Deposit will be insufficient to manage risk in the event of such Member's default. For the reasons outlined above, NSCC determined that raising the minimum Required Fund Deposit to $250,000 was the appropriate amount to both mitigate the risk in the event of default and minimize the burden on members by not raising the minimum Required Fund Deposit to a higher amount.

Third, the proposed increase to the Required Fund Deposit is not purely a tax on small firms and is not intended as an artificial barrier to entry. While the proposed changes would be an added expense on certain smaller firms that currently have a Required Fund Deposit of less than $250,000, it would apply to all firms regardless of size and so would not be disproportionally applied. Backtesting deficiencies indicate that firms with a minimum Required Fund Deposit expose NSCC and other Members to risk in the event of such Member's default. Raising the Required Fund Deposit to $250,000 would mitigate the risks presented by those Members who have a required Fund Deposit of less than $250,000 as outlined above. In addition, as indicated above, although the proposed changes may be more of a burden on those Members that have lower operating margins, lower cash reserves or higher costs of capital compared to other Members, NSCC believes that the increase in Required Fund Deposit is necessary and appropriate as it would apply in relation to the credit exposure risks presented by the class of Members that currently maintain a Required Fund Deposit of less than $250,000. As

observed in the Impact Study Period, 46 Members would be impacted by the proposed $250,000 minimum Required Fund Deposit. On average, 18 Members maintained excess deposit greater than the proposed increase. Therefore, 28 Members on average would have been required to deposit additional funds if the proposal had been implemented. In addition, the 46 Members that would be impacted by the proposed $250,000 minimum Required Fund Deposit, maintained excess net capital[33] or equity capital[34] (as applicable) ("ENC") in excess of $800 thousand on average over the Impact Study Period, ranging between an average $834 thousand to $211.5 billion, with 98% of the impacted Members having on average an ENC above $2.5 million, which can be used to estimate impacted Members' ability to satisfy additional Required Fund Deposit amounts required by the proposal.

Fourth, as indicated by the backtesting results, NSCC believes that the current minimum Required Fund Deposit does indicate risk with respect to those Members that maintain a minimum Required Fund Deposit of less than $250,000 and the increase in the minimum Required Fund Deposit would reduce that risk. NSCC believes that increasing the minimum Required Fund Deposit to $250,000 would provide an appropriate balance of improving Member backtesting results and NSCC's Clearing Fund coverage which will reduce risk for all Members, while minimizing the impact to Members by not raising the minimum Required Fund Deposit to a higher amount which would create more of a burden.

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33 For this purpose, excess net capital is the amount, as of a particular date, equal to the difference between the net capital of a broker or dealer and the minimum net capital such broker or dealer must have to comply with the requirements of Rule 15c3-1(a) of the Act (17 CFR 240.15c3-1(a)), or any successor rule or regulation thereto.

34 For this purpose, equity capital is defined as the amount defined on the Consolidated Report of Condition and Income (i.e., a "Call Report" that is required to be filed by banks and trust companies).

Finally, the Member stated that while it objected to raising the minimum Required Fund Deposit to $250,000, it would not object to an increase to $100,000. NSCC observed that the increase would have improved the Clearing Fund 12-month backtesting coverage percentage to 99.41% overall, and eliminated 10 additional backtesting deficiencies during the Impact Study Period provided by a minimum $250,000 Required Fund Deposit as compared to a minimum $100,000 Required Clearing Fund Deposit. NSCC's findings validate raising the minimum to $250,000. While an increase to a minimum Required Fund Deposit to $100,000 would also represent an improvement of the Clearing Fund coverage, the number of deficiencies eliminated would be fewer. If the minimum Required Fund Deposit had been $250,000 during the Impact Study Period, NSCC would have observed an increase in the number of eliminated deficiencies compared to if the minimum Required Fund Deposit had been $100,000. Backtesting deficiencies indicate a risk that the minimum Required Fund Deposit would be insufficient in the event of a Member's default. NSCC believes the elimination of such additional backtesting deficiencies, together with the improvement of the overall Clearing Fund coverage percentage to 99.41%, if the minimum Required Fund Deposit were raised to $250,000 rather than $100,000, reflect a reduction in risk that justifies raising the minimum Required Fund Deposit to $250,000 rather than $100,000. As a result, NSCC believes that $250,000 is the appropriate minimum Required Fund Deposit amount that will minimize the financial impact to its Members while maximizing risk management of activity that is guaranteed at the point of validation or comparison by NSCC.

NSCC completed an additional round of outreach to all NSCC Members in April 2021 and did not receive any written comments. NSCC will notify the Commission of any additional written comments received by NSCC.

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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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 (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSCC-2021-005 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-2021-005. 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-2021-005 and should be submitted on or before **[INSERT DATE 21 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

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

J. Matthew DeLesDernier,
Assistant Secretary.
[FR Doc. 2021-10175 Filed: 5/13/2021 8:45 am; Publication Date: 5/14/2021]

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[35] 17 CFR 200.30-3(a)(12).