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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92213; File No. SR-NSCC-2021-002]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 1, to Amend the Supplemental Liquidity Deposit Requirements

June 21, 2021.

**I. INTRODUCTION**

On March 5, 2021, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-NSCC-2021-002 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to amend its supplemental liquidity deposit requirements.<sup>3</sup> The proposed rule change was published for comment in the Federal Register on March 24, 2021,<sup>4</sup> and the Commission has received comments in support of the changes proposed therein.<sup>5</sup> On May 7, 2021, pursuant to Section 19(b)(2) of the Act,<sup>6</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Notice of Filing, infra note 4, at 86 Fed. Reg. 15738. On March 5, 2021, NSCC also filed the proposals contained in the proposed rule change as advance notice SR-NSCC-2021-801 (the “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), and Rule 19b-4(n)(1)(i) of the Act, 17 CFR 240.19b-4(n)(1)(i). Notice of filing of the Advance Notice was published in the Federal Register on March 24, 2021. Securities Exchange Act Release No. 91347 (March 18, 2021), 86 Fed. Reg. 15750 (March 24, 2021) (File No. SR-NSCC-2021-801).

<sup>4</sup> Securities Exchange Act Release No. 91350 (March 18, 2021), 86 Fed. Reg. 15738 (March 24, 2021) (File No. SR-NSCC-2021-002) (“Notice of Filing”).

<sup>5</sup> Comments are available at <https://www.sec.gov/comments/sr-nsc-2021-002/srnsc2021002.htm>. To date, the comments received generally support the proposal.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

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.<sup>7</sup> On June 17, 2021, NSCC filed Partial Amendment No. 1 to the proposed rule change, which provided additional description of the proposed rule change and did not change the substance of the proposed rule change, as discussed in more detail in Section II.D below. The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and, for the reasons discussed below, is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter, “Proposed Rule Change”), on an accelerated basis.

## **II. DESCRIPTION OF THE PROPOSED RULE CHANGE**

### **A. Background**

As a central counterparty (“CCP”),<sup>8</sup> NSCC occupies an important role in the securities settlement system by interposing itself between counterparties to financial transactions, becoming the buyer to each seller and seller to each buyer to ensure the performance of the contract, thereby reducing the risk faced by its Members<sup>9</sup> and contributing to global financial stability. NSCC’s liquidity risk management plays an integral part in NSCC’s ability to perform its role as a CCP. If a Member defaults, NSCC, as a CCP, would need to complete settlement of guaranteed transactions on the failing Member’s behalf from the date of default through the remainder of the settlement cycle (currently two days for securities that settle on a regular way basis in the U.S. markets). To do so, and to meet its related regulatory requirements, NSCC seeks to

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<sup>7</sup> Securities Exchange Act Release No. 91788 (May 7, 2021), 86 Fed. Reg. 26112 (May 12, 2021) (File No. SR-NSCC-2021-002).

<sup>8</sup> 17 CFR 240.17Ad-22(a)(1).

<sup>9</sup> Capitalized terms not defined herein are defined in NSCC’s Rules and Procedures (“Rules”), available at [http://dtcc.com/~//media/Files/Downloads/legal/rules/nscc\\_rules.pdf](http://dtcc.com/~//media/Files/Downloads/legal/rules/nscc_rules.pdf).

maintain sufficient liquid resources in order to meet the potential funding required to settle outstanding transactions of a defaulting Member in a timely manner, as well as to hold qualifying liquid resources sufficient to meet its minimum liquidity resource requirement in each relevant currency for which it has payment obligations owed to its Members.<sup>10</sup>

NSCC has a number of default liquidity resources that it considers to be qualifying liquid resources for the purposes of Rule 17Ad-22(a)(14).<sup>11</sup> These resources include: (1) cash deposits to the NSCC Clearing Fund;<sup>12</sup> (2) the proceeds of the issuance and private placement of (a) short-term, unsecured notes in the form of commercial paper and extendable notes (“Commercial Paper Program”),<sup>13</sup> and (b) term debt (“Term Debt Issuance”);<sup>14</sup> (3) cash that would be obtained by drawing on NSCC’s committed 364-day credit facility with a consortium of banks (“Line of Credit”);<sup>15</sup> and (4) supplemental

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<sup>10</sup> See Securities Exchange Act Release No. 82377 (December 21, 2017), 82 Fed. Reg. 61617 (December 28, 2017) (File Nos. SR-DTC-2017-004; SR-FICC-2017-008; SR-NSCC-2017-005) (approving NSCC’s Liquidity Risk Management Framework).

<sup>11</sup> See Notice of Filing, *supra* note 4, at 15738-39. Qualifying liquid resources include, among other things: cash held either at the central bank of issue or at creditworthy commercial banks, and assets that are readily available and convertible into cash through prearranged funding arrangements, such as committed arrangements without material adverse change provisions, including lines of credit, foreign exchange swaps, and repurchase agreements. 17 CFR 240.17Ad-22(a)(14).

<sup>12</sup> See Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the Rules, *supra* note 9.

<sup>13</sup> See Securities Exchange Act Release Nos. 75730 (August 19, 2015), 80 Fed. Reg. 51638 (August 25, 2015) (File No. SR-NSCC-2015-802); 82676 (February 9, 2018), 83 Fed. Reg. 6912 (February 15, 2018) (File No. SR-NSCC-2017-807).

<sup>14</sup> See Securities Exchange Act Release No. 88146 (February 7, 2020), 85 Fed. Reg. 8046 (February 12, 2020) (File No. SR-NSCC-2019-802).

<sup>15</sup> See Securities Exchange Act Release No. 80605 (May 5, 2017), 82 Fed. Reg. 21850 (May 10, 2017) (File Nos. SR-DTC-2017-802; SR-NSCC-2017-802).

liquidity deposits, collected pursuant to NSCC Rule 4(A), as discussed further below.<sup>16</sup>

## **B. Current Rules Relating to Supplemental Liquidity Deposits**

Currently, NSCC only collects supplemental liquidity deposits during monthly options expiry periods in order to cover the heightened liquidity exposure resulting from increased trading activity around options expiration.<sup>17</sup> NSCC only collects supplemental liquidity deposits from its 30 largest Members or group of affiliated Members (hereinafter, “Providers”).<sup>18</sup> NSCC calculates each Provider’s supplemental liquidity obligation for an upcoming options expiry period using an estimate based on NSCC’s highest liquidity need and the Provider’s settlement activity during the prior 24-months.<sup>19</sup> Providers, in turn, must fund their supplemental liquidity obligations two business days prior to the start of the options expiry period, which NSCC will return seven business days after the end of that period.<sup>20</sup>

In order to ensure NSCC maintains adequate liquidity resources throughout the options expiry period, Providers may voluntarily prefund additional supplemental liquidity deposits at the start of the period, if it anticipates increases in its trading activity,

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<sup>16</sup> See Rule 4(A) (Supplemental Liquidity Deposits) of the Rules, supra note 9. See also Securities Exchange Act Release Nos. 70999 (December 5, 2013), 78 Fed. Reg. 75413 (December 11, 2013) (File No. SR-NSCC-2013-02); 71000 (December 5, 2013), 78 Fed. Reg. 75400 (December 11, 2013) (File No. SR-NSCC-2013-802).

<sup>17</sup> See Rule 4(A), supra note 9. NSCC defines the duration of the options expiry periods in its Rules, which typically runs from the third Friday of the month to the following Tuesday. See id.

<sup>18</sup> See Section 2 of Rule 4(A), supra note 9. NSCC may use a Provider’s supplemental liquidity deposit to satisfy a loss or liability arising only from that Provider’s default on its obligations to NSCC. Supplemental liquidity deposits are not otherwise subject to NSCC’s Loss Allocation Waterfall. See Section 13(c) of Rule 4(A), supra note 9.

<sup>19</sup> See Section 2 of Rule 4(A), supra note 9. Typically, NSCC performs this calculation, at the latest, one week prior to the start of the options expiry period.

<sup>20</sup> See Sections 4 and 9 of Rule 4(A), supra note 9.

compared to its historical activity, will create a liquidity shortfall at NSCC.<sup>21</sup> In the event a Provider fails to provide adequate voluntary prefunded deposits, NSCC may require the Provider to fund additional supplemental liquidity deposits if NSCC experiences a resulting liquidity shortfall,<sup>22</sup> which NSCC may hold for up to 90 days.<sup>23</sup> The 90-day lock-up incentivizes Providers to voluntarily prefund their supplemental liquidity deposits in order to ensure NSCC maintains adequate liquidity resources throughout the options expiry period.

**C. Proposed Changes to the Rules Relating to Supplemental Liquidity Deposits**

As discussed above, NSCC may only collect supplemental liquidity deposits during monthly options expiry periods under its current Rules.<sup>24</sup> However, NSCC can face sudden liquidity shortfalls on any business day, not just those business days that fall within monthly options expiry periods, particularly during volatile market conditions unrelated to options expiration.<sup>25</sup> To address this issue, NSCC proposes to change the frequency at which it may collect supplemental liquidity deposits to each business day, based on a daily calculation. This proposed approach to collecting supplemental liquidity deposits should allow NSCC to respond quickly to any sudden liquidity shortfalls arising from a Provider's activity, regardless of when those shortfalls occur.

NSCC also proposes the ability to collect supplemental liquidity deposits on an intraday basis in certain instances where sudden intraday increases in liquidity risk justify

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<sup>21</sup> See Section 2 of Rule 4(A), supra note 9. See also, Notice of Filing, supra note 4, at 15739.

<sup>22</sup> See Section 7 of Rule 4(A), supra note 9.

<sup>23</sup> See Section 10 of Rule 4(A), supra note 9.

<sup>24</sup> The description that follows is excerpted from the Notice of Filing, supra note 4.

<sup>25</sup> See Notice of Filing, supra note 4, at 15740.

shortening the amount of time NSCC is exposed to that risk, including a mandatory intraday collection in connection with monthly options expiry periods. Moreover, NSCC proposes to eliminate the up to 90 day lock-up period of certain supplemental liquidity deposits. Additionally, NSCC proposes an alternative pro rata daily calculation in the rare event its regular daily calculation would inadvertently result in collecting supplemental liquidity deposits from multiple Providers that, taken together, would significantly exceed NSCC's liquidity needs on that day.

### **1. Proposed Daily Calculation of Supplemental Liquidity Deposits**

A Provider<sup>26</sup> will be obligated to provide a supplemental liquidity deposit on each business day in which its settlement activity causes a liquidity shortfall at NSCC.<sup>27</sup> NSCC will provide a notice to each Provider of the amount of its supplemental liquidity deposit, which the Provider will be required to fund within one hour of such notice.<sup>28</sup>

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<sup>26</sup> Under the proposal, Providers will continue to be the 30 largest Members or group of affiliated Members, but NSCC proposes to simplify how it determines the 30 Providers in order to provide greater transparency and predictability in its determination. The 30 Providers will be determined daily and will be based on the Provider's settlement activity during the prior 24-months. NSCC's determination will no longer require a calculation of liquidity exposures the Providers presented to NSCC based on NSCC's qualifying liquid resources throughout a 24 month lookback period. NSCC will continue to make available to each Member daily information on NSCC's liquidity need based on that Member's settlement activity on the previous business day.

<sup>27</sup> A liquidity shortfall will arise if NSCC's daily liquidity need exceeds its qualifying liquid resources, assuming stressed market conditions. NSCC will continue to apply stress scenarios in determining its total qualifying liquid resources in order to anticipate market conditions that could cause those resources to be unavailable on that day. Because the daily calculation will be done at the start of each business day, it will be based on the qualifying liquid resources available to NSCC as of the end of the prior business day.

<sup>28</sup> NSCC's proposed timing would mirror the current requirement that is applied to its Members' Required Fund Deposits (i.e., margin), which is also calculated and collected daily, and must be funded within one hour of demand. NSCC expects to deliver notification of Provider obligations by around 8:30 AM ET each business day, with deposits required by no later than 9:30 AM ET. See Notice of Filing, supra note 4, at 15741.

NSCC proposes to return supplemental liquidity deposits on the next business day,<sup>29</sup> except in certain circumstances as described in greater detail in Section II.C.4. below.

NSCC states that, under its proposed calculation, it will no longer need to estimate its liquidity need for a Provider's expected settlement activity based on the Provider's historical settlement activity.<sup>30</sup> Instead, each Provider's deposit will be calculated based on NSCC's actual liquidity need based on the Provider's daily settlement activity in the event the Provider defaulted on that day, which NSCC believes will provide both NSCC and Providers with a more reliable measure of the liquidity risks posed to NSCC.<sup>31</sup>

NSCC provided the Commission with the results of an impact study comparing the proposal against the observed regulatory liquidity needs and NSCC's qualifying liquid resources available during the period from 2016 through 2020. The study assessed both pro-forma and hypothetical impacts of the proposal under various liquidity scenarios. The study also analyzed historical trends including the average composition and rankings of the top 30 Providers at NSCC during the 2016 to 2020 period. Based on the pro-forma/hypothetical impact as well analysis of the top Providers, the study's results generally indicate that the proposal would continue to allow NSCC to meet its regulatory liquidity obligations, and the largest Members would continue to be the ones affected by supplemental liquidity obligations.<sup>32</sup>

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<sup>29</sup> Because NSCC would recalculate supplemental liquidity deposits daily, NSCC will no longer need to hold deposits for the extended periods under its current Rules. See Notice of Filing, supra note 4, at 15742.

<sup>30</sup> See Notice of Filing, supra note 4, at 15740.

<sup>31</sup> See id. at 15740-41.

<sup>32</sup> See id. at 15744. NSCC further states that if its other qualifying liquid resources materially decrease, it would expect to see an increase in both number and amount of supplemental liquidity obligations that Providers would have been required to fund under the proposed rule. See id. at 15744.

## **2. Proposed Intraday Supplemental Liquidity Calls**

NSCC also proposes to establish intraday supplemental liquidity calls, which are intended to allow NSCC to calculate and collect additional supplemental liquidity deposits on an intraday basis if a Provider's increased daily activity levels or projected settlement activity causes a NSCC liquidity shortfall during a given day.<sup>33</sup> NSCC believes the proposed intraday supplemental liquidity calls will help to mitigate increased liquidity exposures presented to NSCC on an intraday basis in specified circumstances, as discussed further below.<sup>34</sup>

### **i. Proposed Mandatory Intraday Supplemental Liquidity Call During Options Expiry Periods**

First, NSCC proposes to establish a mandatory monthly intraday supplemental liquidity call that is calculated and collected, when applicable, on the first business day (typically a Friday) of an options expiry period.<sup>35</sup> A Provider's mandatory intraday supplemental liquidity call will be the difference between, on the one hand, NSCC's qualifying liquid resources and, on the other hand, NSCC's daily liquidity need based on the Provider's settlement activity at the start of the business day, recalculated to account for both the Provider's actual settlement activity submitted to NSCC over the course of the day, and the Provider's projected settlement activity in stock options expected to be submitted to NSCC.<sup>36</sup> Because NSCC's recalculated daily liquidity need will not factor

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<sup>33</sup> The alternative pro rata calculation described in Section II.C.3 below would not apply to an intraday supplemental liquidity call.

<sup>34</sup> See Notice of Filing, supra note 4, at 15741.

<sup>35</sup> NSCC will retain how it defines the duration of the options expiry periods in its Rules. See supra note 17.

<sup>36</sup> Each business day, NSCC receives information regarding projected settlement activity from The Options Clearing Corporation ("OCC") pursuant to a Stock and Futures Settlement Agreement. That agreement provides for the clearance and settlement of exercises and assignments of options on eligible securities or the maturity of eligible stock futures contracts through NSCC. See Securities



in late day trades or other off-setting settlement activity,<sup>37</sup> NSCC proposes to adjust its re-calculated daily liquidity need using an estimated netting percentage based on each Provider's average percentage of netting from its off-setting settlement activity observed over the prior 24 months. NSCC states that the actual settlement activity flowing into NSCC for cash settlement of stocks underlying expiring options is typically lower than the projected settlement activity NSCC receives from OCC on the Thursday before the start of the options expiry period due to late day offsetting trades in stock options on that Friday; therefore, applying this netting percentage should more accurately reflect the actual liquidity exposures that will be presented to NSCC from the Providers.<sup>38</sup>

Moreover, NSCC proposes to eliminate the up to 90 day lock-up period of certain supplemental liquidity deposits. NSCC will no longer need to hold these deposits for longer periods because NSCC proposes to use the daily calculation and collection of supplemental liquidity deposits to help ensure NSCC maintains adequate liquidity resources each day, including throughout options expiry periods.<sup>39</sup>

**ii. Proposed Discretionary Intraday Supplemental Liquidity Call Other Than During Options Expiry Periods**

Second, NSCC proposes to establish a discretionary intraday supplemental liquidity call on any business day other than the first business day during options expiry periods. Under this provision, NSCC will have the discretion to call for additional

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Exchange Act Release No. 81260 (July 31, 2017), 82 Fed. Reg. 36484 (August 4, 2017) (File Nos. SR-NSCC-2017-803; SR-OCC-2017-804). In this case, the re-calculation will be based on the data NSCC receives from OCC late Thursday.

<sup>37</sup> See Notice of Filing, *supra* note 4, at 15741. For example, an affiliated Member may be entitled, under NSCC Rules, to liquidity credits based the trading activity of its affiliates, who are also Members, in order to determine NSCC's net liquidity exposure from the affiliated family of Members.

<sup>38</sup> See Notice of Filing, *supra* note 4, at 15741.

<sup>39</sup> See *id.* at 15740.

supplemental liquidity deposits on an intraday basis on any such business day if a Provider's increased activity levels during that day would cause a liquidity shortfall at NSCC. The amount of a Provider's intraday supplemental liquidity call, pursuant to NSCC's discretion, would be the difference between NSCC's daily liquidity need, recalculated to take into account the increase in the Provider's settlement activity during the day, and NSCC's qualifying liquid resources.

NSCC states that it would collect a discretionary intraday call in circumstances where NSCC believes it should accelerate the collection of a Provider's supplemental liquidity obligation because that Provider's intraday settlement activity would cause NSCC's liquidity needs to exceed its liquidity resources.<sup>40</sup> For example, NSCC may impose an intraday supplemental liquidity call on a Provider if NSCC determines that Provider is unlikely to meet its projected settlement obligations through the settlement cycle due to rapidly escalating financial stress.<sup>41</sup> NSCC will make this determination based on a variety of factors, including NSCC's assessment of the Provider's ability to meet its obligations to NSCC (i.e., an assessment of the Provider's creditworthiness on a particular business day) or estimates of settlement activity that could offset settlement exposures and are not reflected in NSCC's liquidity estimates.<sup>42</sup>

### **3. Proposed Pro Rata Calculation of Supplemental Liquidity Deposits**

As a potential alternative to the calculation described above, NSCC proposes a discretionary pro rata calculation that could apply in the event two or more Providers each would be obligated to provide a supplemental liquidity deposit of more than \$2

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<sup>40</sup> See id. at 15741-42.

<sup>41</sup> See id. at 15742.

<sup>42</sup> See id.

billion on a business day pursuant to the calculation described above.<sup>43</sup> Under the proposed alternative, NSCC will have the option to allocate, on a pro rata basis, its largest liquidity need on a business day to all Providers that are required to make a supplemental liquidity deposit on that day, thereby reducing all such Providers' obligations to NSCC on that day. NSCC's determination will be based on the market conditions at that time. For example, NSCC may determine that, in certain market conditions, this alternative approach would be appropriate to alleviate liquidity pressures on all Providers required to make a supplemental liquidity deposit on that day.<sup>44</sup> NSCC states this alternative would allow NSCC to use this pro rata calculation to sufficiently cover its liquidity exposure on that day, without requiring that all Providers fund the total amount of its calculated supplemental liquidity deposit on that day.

#### **4. Proposed Clarifying Changes to the Treatment of Supplemental Liquidity Deposits**

As described in Section II.C.1 above, NSCC proposes to return supplemental liquidity deposits, including any amount funded pursuant to an intraday supplemental liquidity call, on the next business day. However, NSCC proposes to clarify that, consistent with its current Rules regarding excess Clearing Fund deposits, it will have the right to withhold all or any part of any Member's excess Clearing Fund deposits, including supplemental liquidity deposits, if that Member has been placed on the Watch List pursuant to the Rules or if NSCC determines that the Member's anticipated activities in the near future may reasonably be expected to be materially different than its activities

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<sup>43</sup> NSCC represents that it has never had two or more Providers owe more than \$2 billion on a calculation date since its adoption of the supplemental liquidity deposit Rules in 2013. Therefore, NSCC believes this alternative calculation would only be available in very limited circumstances. See Notice of Filing, supra note 4, at 15741.

<sup>44</sup> See Notice of Filing, supra note 4, at 15741.

of the recent past.<sup>45</sup> NSCC states that, while the proposed provision would not change NSCC's rights with respect to these funds, it would provide Members with greater transparency into how supplemental liquidity deposits will be treated under Rule 4.<sup>46</sup>

NSCC further proposes that it will hold a retired Provider's supplemental liquidity deposits for 30 calendar days after any of the Provider's open transactions have settled and obligations have been satisfied,<sup>47</sup> rather than return such deposits on the next business day. NSCC states that the proposed provision will help protect NSCC from liquidity risks presented by open transactions in the days following a firm's retirement and would align the treatment of these funds with the treatment of a retired Member's Required Fund Deposits.<sup>48</sup>

Additionally, NSCC proposes to simplify and clarify NSCC's right to debit Providers' accounts at NSCC if a Provider fails to meet its supplemental liquidity obligations, and NSCC's obligation to make available to Providers the amount of the Daily Liquidity Need that NSCC would have had in the event the Provider defaulted on the previous business day. NSCC states that, while the proposed miscellaneous changes will not significantly alter the structure of these provisions, they will provide transparency to Providers regarding their rights and obligations under the Rules.<sup>49</sup>

**D. Partial Amendment No. 1**

On June 17, 2021, NSCC filed Partial Amendment No. 1 to revise its disclosure,

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<sup>45</sup> See Section 9 of Rule 4, supra note 9. Proposed Section 12(a) of Rule 4(A) cross-references to Section 9 of Rule 4.

<sup>46</sup> See Notice of Filing, supra note 4, at 15742.

<sup>47</sup> See Section 7 of Rule 4, supra note 9. Proposed Section 10 of Rule 4(A) cross-references to Section 7 of Rule 4.

<sup>48</sup> See Notice of Filing, supra note 4, at 15742.

<sup>49</sup> See id.

pursuant to Item 3(a) of Form 19b-4, relating to the purpose of the Proposed Rule Change by including the following language at the beginning of its Item 3(a) disclosure:

As described in greater detail below, NSCC adopted the SLD requirements in 2013 to establish supplemental liquidity deposits to the Clearing Fund designed to ensure that NSCC has adequate liquidity resources to meet its liquidity needs during monthly options expiry settlement periods when NSCC observes significant increases in its liquidity exposures. Since that time, NSCC has continued to strengthen its liquidity risk management by diversifying its sources of qualifying liquid resources. These efforts are aimed at, for example, managing the risk that any one of those sources is reduced.

In connection with these ongoing efforts, NSCC is proposing changes to the SLD requirements. As described in greater detail in this filing, the proposed changes include:

- (1) calculating and collecting, when applicable, SLD on each Business Day, rather than only during the monthly options settlement periods.
- (2) calculating SLD based on observed Member activity, rather than based on historical and forecasted settlement activity.
- (3) adopting an intraday SLD calculation and collection, when applicable, on the first Business Day of the monthly options settlement periods based on additional exposures that are presented by options activity submitted after the start of day.
- (4) eliminating the 90-day holding period for certain SLD.
- (5) adopting a discretionary, alternative pro rata calculation of Members' SLD requirements that would apply in certain circumstances and allow NSCC to allocate its largest liquidity need on a Business Day among Members that are required to pay SLD, rather than collect separate SLD from each of those

Members.

In Partial Amendment No. 1, NSCC clarifies its disclosure describing the purpose of the proposal, pursuant to Item 3(a) of Form 19b-4. NSCC does not, however, make changes to the proposal itself, including the proposed text of the Rules that was provided as Exhibit 5 to the Proposed Rule Change. Therefore, Partial Amendment No. 1, NSCC does not alter the manner in which the Proposed Rule Change would nor does it alter the manner in which the Proposed Rule Change will affect its Members or other interested persons.

### **III. DISCUSSION AND COMMISSION FINDINGS**

Section 19(b)(2)(C) of the Act<sup>50</sup> 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 the rules and regulations thereunder applicable to such organization. After careful consideration, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations applicable to NSCC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F)<sup>51</sup> of the Act and Rule 17Ad-22(e)(7)<sup>52</sup> thereunder.

#### **A. Consistency with Section 17A(b)(3)(F) of the Act**

Section 17A(b)(3)(F)<sup>53</sup> of the Act requires, in part, that the rules of a clearing agency, such as NSCC, be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of

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<sup>50</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>51</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>52</sup> 17 CFR 240.17Ad-22(e)(7)(i) and (ii).

<sup>53</sup> 15 U.S.C. 78q-1(b)(3)(F).

securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act for the reasons stated below.

As described above in Section II.B, NSCC can face sudden liquidity shortfalls on any business day, particularly during volatile market conditions, which can be unrelated to options expiration. As a CCP, it is imperative that NSCC maintains adequate resources to satisfy liquidity needs arising from its settlement obligations, including in the event of a Member default. However, NSCC currently may only collect supplemental liquidity deposits during monthly options expiry periods. As described above in Section II.C.1, the Proposed Rule Change is designed to allow NSCC to respond quickly to sudden liquidity shortfalls that may arise, regardless of timing, by collecting supplemental liquidity deposits based on a daily calculation, instead of being limited to only the monthly options expiration period. The ability to calculate and collect supplemental liquidity deposits, as applicable, on a daily basis should help NSCC more accurately manage its daily liquidity exposures based on Members' actual activity. Moreover, the proposal would allow NSCC to determine the amount of supplemental liquidity deposits based on Members' actual activity, providing more precise and, potentially, lower charges for Members than provided under the current methodology, which uses estimates based on a look-back period and can, on occasion, result in NSCC collecting more resources than needed to cover its exposure.

Further, as described above in Section II.C.3, the proposal will provide NSCC with additional flexibility over the timing and amount of collections. First, establishing the mandatory intraday supplemental liquidity calls on the first business day of the monthly options expiry periods should help NSCC continue to manage the potential increased liquidity exposures that may arise from options settlement-related activity by allowing it to accelerate the collection of supplemental liquidity deposits on that day, as

opposed to waiting for the proposed daily collection that would occur on the morning of the following business day. Second, the proposed discretionary intraday supplemental liquidity calls should collect additional supplemental liquidity deposits from Members whose activity outside of the monthly options expiry periods may cause a sudden increase in NSCC's liquidity needs on an overnight basis. Moreover, as described above in Section II.C.3, the proposed alternative pro rata calculation that NSCC may apply in certain circumstances will provide NSCC the flexibility to determine the total amount collected on a business day, while continuing to collect sufficient liquidity to complete end-of-day settlement in the event the Provider with the largest payment obligation defaults.

Additionally, as described above in Section II.C.4, the proposed clarifying changes would make the rights and obligations of both NSCC and its Members under the Rules more transparent and easier to understand. A clearer rule supports the ability of Members to meet their supplemental liquidity deposit requirements and understand how NSCC will treat such deposits, and the liquidity provided to NSCC through supplemental liquidity deposits would allow it to complete end-of-day settlement in the event the Provider with the largest payment obligation defaults.

For the reasons stated above, the Commission finds the Proposed Rule Change is designed to allow NSCC to address potential sudden liquidity exposures that may arise on a daily basis. The daily calculation and collection of supplemental liquidity deposits should allow NSCC to effectively cover those liquidity exposures and, should help NSCC ensure it can complete settlement for all its Members in the event one Member defaults, which the Commission believes should promote the prompt and accurate clearance and settlement of securities transactions. Moreover, the Commission believes that enhancing NSCC's ability to complete settlement in the event of a Member default should help avoid the potential for loss mutualization among the non-defaulting members and



potential impacts on the broader financial system, which is consistent with assuring the safeguarding of securities and funds which are in its custody or control. Accordingly, the Commission finds the changes proposed in the Proposed Rule Change are consistent with Section 17A(b)(3)(F) of the Act.<sup>54</sup>

**B. Consistency with Rule 17Ad-22(e)(7)(i) and (ii)**

The Commission finds the changes proposed in the Proposed Rule Change are consistent with Rules 17Ad-22(e)(7)(i) and (ii), each promulgated under the Act,<sup>55</sup> for the reasons described below.

Rule 17Ad-22(e)(7)(i) under the Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain 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 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.<sup>56</sup> Rule 17Ad-22(e)(7)(ii) under the Act requires that a cover clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to hold qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under Rule 17Ad-22(e)(7)(i) in each relevant currency for which the covered clearing agency has payment obligations owed to

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<sup>54</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>55</sup> 17 CFR 240.17Ad-22(e)(7)(i) and (ii).

<sup>56</sup> 17 CFR 240.17Ad-22(e)(7)(i).

its clearing members.<sup>57</sup>

As described above in Sections II.C.1 and 2, the Proposed Rule Change would help strengthen NSCC's ability to maintain sufficient liquid resources to complete end-of-day settlement in the event of the Member default by allowing NSCC to calculate and collect, when applicable, supplemental liquidity deposits every business day, or on an intraday basis, from those Members that pose the largest liquidity exposures to NSCC on that day. These resources would be available to NSCC to complete end-of-day settlement in the event of the default of a Member. Moreover, the Commission has reviewed and considered the impact study results provided by NSCC comparing the proposal against the observed regulatory liquidity needs and NSCC's qualifying liquid resources available during the period from 2016 through 2020, to assess both pro-forma and hypothetical impacts of the proposal under various liquidity scenarios,<sup>58</sup> and finds that these results generally indicated that the proposal would continue allow NSCC to meet its regulatory liquidity obligations.

In addition, deposits made to satisfy supplemental liquidity deposit obligations are currently and will continue to be required to be made as cash deposits, which will continue to be held by NSCC at either its cash deposit account at the Federal Reserve Bank of New York, at a creditworthy commercial bank, or in other investments pursuant to NSCC's Clearing Agency Investment Policy.<sup>59</sup> Therefore, supplemental liquidity

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<sup>57</sup> 17 CFR 240.17Ad-22(e)(7)(ii). For purposes of Rule 17Ad-22(e)(7)(ii), "qualifying liquid resources" are defined in Rule 17Ad-22(a)(14) as including, in part, cash held either at the central bank of issue or at creditworthy commercial banks. 17 CFR 240.17Ad-22(a)(14).

<sup>58</sup> See supra note 32 and accompanying text.

<sup>59</sup> See Securities Exchange Act Release Nos. 79528 (December 12, 2016), 81 Fed. Reg. 91232 (December 16, 2016) (File Nos. SR-DTC-2016-007, SR-FICC-2016-005, SR-NSCC-2016-003); 84949 (December 21, 2018), 83 Fed. Reg. 67779 (December 31, 2018) (File Nos. SR-DTC-2018-012, SR-FICC-2018-014, SR-NSCC-2018-013).

deposits would continue to be considered a qualifying liquid resource, as defined by Rule 17Ad-22(a)(14),<sup>60</sup> and would support NSCC's ability to hold qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under Rule 17Ad-22(e)(7)(i),<sup>61</sup> as required by Rule 17Ad-22(e)(7)(ii).<sup>62</sup>

Accordingly, the Commission finds that implementation of the proposed amendments to NSCC's supplemental liquidity deposit requirements would be consistent with Rule 17Ad-22(e)(7)(i) and (ii) under the Act.<sup>63</sup>

#### **IV. SOLICITATION OF COMMENTS**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2021-002 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

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<sup>60</sup> 17 CFR 240.17Ad-22(a)(14).

<sup>61</sup> 17 CFR 240.17Ad-22(e)(7)(i).

<sup>62</sup> 17 CFR 240.17Ad-22(e)(7)(ii).

<sup>63</sup> 17 CFR 240.17Ad-22(e)(7).

All submissions should refer to File Number SR-NSCC-2021-002. 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-2021-002 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

**V. ACCELERATED APPROVAL OF THE PROPOSED RULE CHANGE, AS MODIFIED BY PARTIAL AMENDMENT NO. 1**

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>64</sup> to approve the proposed rule change prior to the 30th day after the date of publication of Partial Amendment No. 1 in the Federal Register. As discussed in Section II.D above, in Partial Amendment No. 1, NSCC amends its Form 19b-4, Item 3(a) disclosure to provide

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<sup>64</sup> 15 U.S.C. 78s(b)(2).

additional description of the purpose of the Proposed Rule Change, and Partial Amendment No. 1 does change the substance of the proposal, the proposed text of the Rules that was provided as Exhibit 5 to the Proposed Rule Change, the manner in which the Proposed Rule Change will operate, or the manner in which the Proposed Rule Change will affect its Members or other interested persons.

Furthermore, as discussed in Section III.A above, the Commission believes that the Proposed Rule Change, as modified by Partial Amendment No. 1, should help NSCC ensure it can complete settlement for all its Members in the event one Member defaults, which the Commission believes should promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F).<sup>65</sup> Therefore, the Commission believes the nature of the changes in Partial Amendment No. 1 and NSCC's intended enhancements to its daily liquidity risk management warrants accelerated approval of the Proposed Rule Change. Accordingly, the Commission finds good cause for approving the Proposed Rule Change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.<sup>66</sup>

## **VI. CONCLUSION**

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>67</sup> and the rules and regulations promulgated thereunder.

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<sup>65</sup> 15 U.S.C. 78q-1(b)(3)(F)

<sup>66</sup> 15 U.S.C. 78s(b)(2).

<sup>67</sup> 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>68</sup> that Proposed Rule Change, as modified by Partial Amendment No. 1, SR-NSCC-2021-002, be, and hereby is, APPROVED on an accelerated basis.<sup>69</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>70</sup>

J. Matthew DeLesDernier,  
Assistant Secretary.

[FR Doc. 2021-13413 Filed: 6/23/2021 8:45 am; Publication Date: 6/24/2021]

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<sup>68</sup> 15 U.S.C. 78s(b)(2).

<sup>69</sup> In approving the Proposed Rule Change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>70</sup> 17 CFR 200.30-3(a)(12).