



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99432; File No. SR-NSCC-2023-007]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Amendment No. 2 to Proposed Rule Change to Modify the Amended and Restated Stock Options and Futures Settlement Agreement and Make Certain Revisions to the NSCC Rules

January 25, 2024.

On August 10, 2023, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-NSCC-2023-007 (“Filing”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder.² The Filing was published for comment in the Federal Register on August 30, 2023. On November 8, 2023, NSCC filed Amendment No. 1 to the Filing. Notice is hereby given that on January 24, 2024, NSCC filed with the Commission Amendment No. 2 to the Filing (“Amendment No. 2”) as described in Items I and II below, which Items have been prepared by NSCC. This Amendment No. 2 supersedes and replaces the Filing in its entirety. The Commission is publishing this notice to solicit comments on this Amendment No. 2 from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b) of the Exchange Act,³ and Rule 19b-4 thereunder,⁴ National Securities Clearing Corporation ("NSCC") is filing this Amendment No. 2 to proposed rule change SR-NSCC-2023-007 with the Commission to (1) modify the Stock Options and Futures Settlement Agreement dated August 5, 2017, between NSCC and The Options Clearing Corporation ("OCC," and together with NSCC, the "Clearing Agencies") ("Existing Accord")⁵ to permit OCC to elect to make a cash payment to NSCC following the default of a common clearing participant that would cause NSCC's central counterparty trade guaranty to attach to certain obligations of that participant ("Phase 1"); (2) improve information sharing between the Clearing Agencies to facilitate the upcoming transition to a T+1 standard securities settlement cycle and allow OCC, after the compliance date under amended Exchange Act Rule 15c6-1(a), to provide certain assurances to NSCC prior to the default of a common clearing participant that would enable NSCC to begin processing E&A/Delivery Transactions (defined below) before the central counterparty trade guaranty attaches to certain obligations of that participant ("Phase 2"); and (3) make certain revisions to the NSCC Rules & Procedures ("NSCC Rules")⁶ in connection with the proposed Phase 1

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ The Existing Accord was previously approved by the Commission. See Securities Exchange Act Release Nos. 81266, 81260 (Jul. 31, 2017), 82 FR 36484 (Aug. 4, 2017) (File Nos. SR-NSCC-2017-007; SR-OCC-2017-013).

⁶ Capitalized terms not defined herein are defined in the NSCC Rules. The NSCC Rules are available at www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.

and Phase 2 modifications to the Existing Accord.⁷ This Amendment No. 2 would amend and replace the Initial Filing and Amendment No. 1 in their entirety.

The proposed changes to the NSCC Rules and the Existing Accord are included in Exhibits 5A and 5B of Amendment No. 2 to File No. SR-NSCC-2023-007. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text, as described in greater detail below.

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

Executive Summary

NSCC is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. OCC is the sole

⁷ NSCC initially filed a proposed rule change concerning the proposed Phase 1 changes on August 10, 2023. See Securities Exchange Act Release No. 98213 (Aug. 24, 2023), 88 FR 59968 (Aug. 30, 2023) (File No. SR-NSCC-2023-007) (“Initial Filing”). NSCC subsequently submitted a partial amendment to clarify the proposed implementation plan for the Initial Filing. See Securities Exchange Act Release No. 98930 (Nov. 14, 2023), 88 FR 80790 (Nov. 20, 2023) (File No. SR-NSCC-2023-007) (“Amendment No. 1”). OCC also has submitted proposed rule change and advance notice filings with the Commission in connection with this proposal. See Securities Exchange Act Release No. 98215 (Aug. 24, 2023), 88 FR 59976 (Aug. 30, 2023) (File No. SR-OCC-2023-007) and Securities Exchange Act Release No. 98214 (Aug. 24, 2023), 88 FR 59988 (Aug. 30, 2023) (SR-OCC-2023-801). (“OCC Filings”).

clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, including options that contemplate the physical delivery of equities cleared by NSCC in exchange for cash (“physically-settled” options).⁸ OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise/assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations. NSCC and OCC maintain a legal agreement, generally referred to by the parties as the “Accord” agreement, that governs the processing of such physically-settled options and futures cleared by OCC that result in settlement obligations in underlying equity securities to be cleared by NSCC (i.e., the Existing Accord).

The Existing Accord establishes terms under which NSCC accepts for clearing certain securities transactions that result from the exercise and assignment of relevant options contracts and the maturity of futures contracts that are cleared and settled by OCC.⁹ It also establishes the time when OCC’s settlement guaranty in respect of those transactions ends and NSCC’s settlement guaranty begins.

The Existing Accord allows for a scenario in which NSCC could choose not to guarantee the settlement of such securities arising out of E&A/Delivery Transactions. Specifically, NSCC is not obligated to guarantee settlement until its member has met its collateral requirements at NSCC. If NSCC chooses not to guarantee settlement, OCC

⁸ The term “physically-settled” as used throughout the OCC Rules refers to cleared contracts that settle into their underlying interest (i.e., options or futures contracts that are not cash-settled). The OCC By-Laws and OCC Rules are available at www.theocc.com/company-information/documents-and-archives/by-laws-and-rules. When a contract settles into its underlying interest, shares of stock are sent, i.e., delivered, to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option and maturity in the case of a future.

⁹ Under the Existing Accord, such options and futures are defined as “E&A/Delivery Transactions,” which refers to “Exercise & Assignment Delivery Transactions.”

would engage in an alternate method of settlement outside of NSCC. This scenario presents two primary problems. First, the cash required for OCC and its Clearing Members in certain market conditions to facilitate settlement outside of NSCC could be significantly more than the amount required if NSCC were to guarantee the relevant transactions. This is because settlement of the transactions in the underlying equity securities outside of NSCC would mean that they would no longer receive the benefit of netting through the facilities of NSCC. In such a scenario, the additional collateral required from Clearing Members to support OCC's continuing settlement guarantee would also have to be sufficiently liquid to properly manage the risks associated with those transactions being due on the second business day following the option exercise or the relevant futures contract maturity date. Based on an analysis of scenarios using historical data where it was assumed that OCC could not settle transactions through the facilities of NSCC, the worst-case outcome resulted in extreme liquidity demands of over \$300 billion for OCC to effect settlement via an alternative method, *e.g.*, by way of gross broker-to-broker settlement, as discussed in more detail below. OCC Clearing Members, by way of their contributions to the OCC Clearing Fund, would bear the brunt of this demand. Furthermore, there is no guarantee that OCC Clearing Members could fund the entire amount of any similar real-life scenarios. By contrast, projected Guaranty Substitution Payments, defined below, identified during the study ranged from approximately \$419 million to over \$6 billion, also as discussed in more detail below.

The second primary problem relates to the significant operational complexities if settlement occurs outside of NSCC. More specifically, netting through NSCC reduces the volume and value of settlement obligations. For example, in 2022 it is estimated that netting through NSCC's continuous net settlement ("CNS") accounting system¹⁰ reduced

¹⁰ See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation) of the NSCC Rules, *supra* note 6.

the value of CNS settlement obligations by approximately 98% or \$510 trillion from \$519 trillion to \$9 trillion. If settlement occurred outside of NSCC, on a broker-to-broker basis between OCC Clearing Members, for example, shares would not be netted, and Clearing Members would have to coordinate directly with each other to settle the relevant transactions. The operational complexities and uncertainty associated with alternate means of settlement would impact every market participant involved in a settlement of OCC-related transactions.

To address these problems, the Clearing Agencies are proposing certain changes as part of Phase 1 to amend and restate the Existing Accord and make related changes to their respective rules that would allow OCC to elect to make a cash payment (the “Guaranty Substitution Payment” or “GSP”) to NSCC following the default of a Common Member¹¹ that would cause NSCC to guarantee settlement of that Common Member’s transactions and, therefore, cause those transactions to be settled through processing by NSCC. In connection with this proposal, OCC also would enhance its daily liquidity stress testing processes and procedures to account for the possibility of OCC making such a payment to NSCC in the event of a Common Member default. By making these enhancements to its stress testing, OCC could include the liquid resources necessary to make the payment in its resource planning. The Clearing Agencies believe that by NSCC accepting such a payment from OCC, the operational efficiencies and reduced costs related to the settlement of transactions through NSCC would limit market disruption following a Common Member default because settlement through NSCC following such a default would be less operationally complex and would be expected to

¹¹ A firm that is both an OCC Clearing Member and an NSCC Member or is an OCC Clearing Member that has designated an NSCC Member to act on its behalf is referred to herein as a “Common Member.” The term “Clearing Member” as used herein has the meaning provided in OCC’s By-Laws. See OCC By-Laws, supra, note 6. The term “Member” as used herein has the meaning provided in the NSCC Rules. See NSCC Rules, supra note 6.

require less liquidity and other collateral from market participants than the processes available to OCC for closing out positions. Additionally, proposed enhancements by OCC to its liquidity stress testing would add assurances that OCC could make such a payment in the event of a Common Member default. The Clearing Agencies believe that their respective clearing members and all other participants in the markets for which OCC provides clearance and settlement would benefit from OCC's ability to choose to make a cash payment to effect settlement through the facilities of NSCC. This change would provide more certainty around certain default scenarios and would blunt the financial and operational burdens market participants could experience in the case of most clearing member defaults.¹²

Finally, the Clearing Agencies are also proposing certain changes as part of Phase 2 that, if approved, would not be implemented until after the Commission shortens the standardized settlement cycle under Exchange Act Rule 15c6-1(a) from two days after the traded date ("T+2") to one day after the trade date ("T+1"), which currently is set for May 28, 2024. The Phase 2 changes would address the operational realities concerning the Accord that will result from the Commission's adoption and implementation of a new standard settlement cycle of T+1 pursuant to Rule 15c6-1(a) under the Act. The Phase 2 changes generally are designed to allow OCC to provide certain assurances with respect to OCC's ability to make a GSP in the event of a Common Member default to NSCC that would permit NSCC to begin processing Common Members' E&A/Delivery Transactions in a shortened settlement cycle prior to guaranty substitution occurring by introducing new or amended terms and setting out the processes associated therewith.

Background

OCC acts as a central counterparty clearing agency for U.S.-listed options and

¹² OCC provided its analysis of the financial impact of alternate means of settlement as an exhibit to the OCC Filings.

futures on a number of underlying financial assets including common stocks, currencies, and stock indices. In connection with these services, OCC provides the OCC Guaranty pursuant to its By-Laws and Rules. NSCC acts as a central counterparty clearing agency for certain equity securities, corporate and municipal debt, exchange traded funds and unit investment trusts that are eligible for its services. Eligible trading activity may be processed through NSCC's CNS system¹³ or through its Balance Order Accounting system,¹⁴ where all eligible compared and recorded transactions for a particular settlement date are netted by issue into one net long (buy), net short (sell) or flat position. As a result, for each day with activity, each Member has a single deliver or receive obligation for each issue in which it has activity at NSCC. In connection with these services, NSCC also provides the NSCC Guaranty pursuant to Addendum K of the NSCC Rules.

OCC's Rules provide that delivery of, and payment for, securities underlying certain exercised stock options and matured single stock futures that are physically settled are generally effected through the facilities of NSCC and are not settled through OCC's facilities.¹⁵ OCC and NSCC executed the Existing Accord to facilitate, via NSCC's systems, the physical settlement of securities arising out of options and futures cleared by OCC. OCC Clearing Members that clear and settle physically-settled options and futures transactions through OCC also are required under OCC's Rules¹⁶ to be Members of NSCC or to have appointed or nominated a Member of NSCC to act on its behalf. As

¹³ See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation) of the NSCC Rules, supra note 6.

¹⁴ See Rule 8 (Balance Order and Foreign Security Systems) and Procedure V (Balance Order Accounting Operation) of the NSCC Rules, supra note 6.

¹⁵ See Chapter IX of OCC's Rules (Delivery of Underlying Securities and Payment), supra note 8.

¹⁶ See OCC Rule 901, supra note 8.

noted above, these firms are referred to as “Common Members” in the Existing Accord.

Summary of the Existing Accord

The Existing Accord governs the transfer between OCC and NSCC of responsibility for settlement obligations that involve a delivery and receipt of stock in the settlement of physically-settled options and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC (“E&A/Delivery Transactions”). It also establishes the time when OCC’s settlement guaranty (the “OCC Guaranty”) ends and NSCC’s settlement guaranty (the “NSCC Guaranty”)¹⁷ begins with respect to E&A/Delivery Transactions. However, in the case of a Common Member default¹⁸ NSCC can reject these settlement obligations, in which case the settlement guaranty would not transfer from OCC to NSCC and OCC would not have a right to settle the transactions through the facilities of NSCC. Instead, OCC would have to engage in alternative methods of settlement that have the potential to create significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members.¹⁹ More specifically, this could involve broker-to-broker settlement between OCC Clearing Members.²⁰ This settlement method is operationally

¹⁷ See Addendum K and Procedure III of the NSCC Rules, supra note 6.

¹⁸ A Common Member that has been suspended by OCC or for which NSCC has ceased to act is referred to as a “Mutually Suspended Member.”

¹⁹ For example, OCC evaluated certain Clearing Member default scenarios in which OCC assumed that NSCC would not accept the settlement obligations under the Existing Accord, including the default of a large Clearing Member coinciding with a monthly options expiration. OCC has estimated that in such a Clearing Member default scenario, the aggregate liquidity burden on OCC in connection with obligations having to be settled on a gross broker-to-broker basis could reach a significantly high level. For example, in January 2022, the largest gross broker-to-broker settlement amount in the case of a larger Clearing Member default would have resulted in liquidity needs of approximately \$384,635,833,942. OCC provided the data and analysis as an exhibit to the OCC Filings.

²⁰ In broker-to-broker settlement, Clearing Member parties are responsible for coordinating settlement – delivery and payment – among themselves on a transaction-by-transaction basis. Once transactions settle, the parties also have an

complex because it requires bilateral coordination directly between numerous Clearing Members rather than relying on NSCC to facilitate multilateral netting to settle the relevant settlement obligations. As described above, it also potentially could result in significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members because the transactions would not be netted through the facilities of NSCC. Alternatively, where NSCC accepts the E&A/Delivery Transactions from OCC, the OCC Guaranty ends and the NSCC Guaranty takes effect. The transactions are then netted through NSCC's systems, which allows settlement obligations for the same settlement date to be netted into a single deliver or receive obligation. This netting reduces the costs associated with securities transfers by reducing the number of securities movements required for settlement and further reduces operational and market risk. The benefits of such netting by NSCC may be significant with respect to the large volumes of E&A/Delivery Transactions processed during monthly options expiry periods.

Pursuant to the Existing Accord, on each trading day NSCC delivers to OCC a file that identifies the securities, including stocks, exchange-traded funds and exchange-traded notes, that are eligible (1) to settle through NSCC and (2) to be delivered in settlement of (i) exercises and assignments of stock options cleared and settled by OCC or (ii) delivery obligations from maturing stock futures cleared and settled by OCC. OCC, in turn, delivers to NSCC a file identifying securities to be delivered, or received, for physical settlement in connection with OCC transactions.²¹

obligation to affirmatively notify OCC so that OCC can close out the transactions. If either one of or both of the parties do not notify OCC, the transaction would remain open on OCC's books indefinitely until the time both parties have provided notice of settlement to OCC.

²¹ Each day that both OCC and NSCC are open for accepting trades for clearing is referred to as an "Activity Date" in the Existing Accord. Securities eligible for settlement at NSCC are referred to collectively as "Eligible Securities" in the Existing Accord. Eligible securities are settled at NSCC through NSCC's CNS Accounting Operation or NSCC's Balance Order Accounting Operation.

After NSCC receives the list of eligible transactions from OCC and NSCC has received all required deposits to the NSCC Clearing Fund from all Common Members taking into consideration amounts required to physically settle the OCC transactions, the OCC Guaranty would end and the NSCC Guaranty would begin with respect to physical settlement of the eligible OCC-related transactions.²² At this point, NSCC is solely responsible for settling the transactions.²³

Each day, NSCC is required to promptly notify OCC at the time the NSCC Guaranty takes effect. If NSCC rejects OCC's transactions due to an improper submission²⁴ or if NSCC "ceases to act" for a Common Member,²⁵ NSCC's Guaranty would not take effect for the affected transactions pursuant to the NSCC Rules.

NSCC is required to promptly notify OCC if it ceases to act for a Common Member. Upon receiving such a notice, OCC would not continue to submit to NSCC any further unsettled transactions that involve such Common Member, unless authorized

²² The term "NSCC Clearing Fund" as used herein has the same meaning as the term "Clearing Fund" as provided in the NSCC Rules. Procedure XV of the NSCC Rules provides that all NSCC Clearing Fund requirements and other deposits must be made within one hour of demand, unless NSCC determines otherwise, supra note 6.

²³ This is referred to in the Existing Accord as the "Guaranty Substitution Time," and the process of the substitution of the NSCC Guaranty for the OCC Guaranty with respect to E&A/Delivery Transactions is referred to as "Guaranty Substitution."

²⁴ Guaranty Substitution by NSCC (discussed further below) does not occur with respect to an E&A/Delivery Transaction that is not submitted to NSCC in the proper format or that involves a security that is not identified as an Eligible Security on the then-current NSCC Eligibility Master File.

²⁵ Under NSCC's Rules, a default would generally be referred to as a "cease to act" and could encompass a number of circumstances, such as an NSCC Member's failure to make a Required Fund Deposit in a timely fashion. See NSCC Rule 46 (Restrictions on Access to Services), supra note 6. An NSCC Member for which it has ceased to act is referred to in the Existing Accord as a "Defaulting NSCC Member." Transactions associated with a Defaulting NSCC Member are referred to as "Defaulted NSCC Member Transactions" in the Existing Accord.

representatives of both OCC and NSCC otherwise consent. OCC would, however, deliver to NSCC a reversal file containing a list of all transactions that OCC already submitted to NSCC and that involve such Common Member. The NSCC Guaranty ordinarily would not take effect with respect to transactions for a Common Member for which NSCC has ceased to act, unless both Clearing Agencies agree otherwise. As such, NSCC does not have any existing contractual obligation to guarantee such Common Member's transactions. To the extent the NSCC Guaranty does not take effect, OCC's Guaranty would continue to apply, and, as described above, OCC would remain responsible for effecting the settlement of such Common Member's transactions pursuant to OCC's By-Laws and Rules.

As noted above, the Existing Accord does provide that the Clearing Agencies may agree to permit additional transactions for a Common Member default ("Defaulted NSCC Member Transactions") to be processed by NSCC while subject to the NSCC Guaranty. This optional feature, however, creates uncertainty for the Clearing Agencies and market participants about how Defaulted NSCC Member Transactions may be processed following a Common Member default, and also does not provide NSCC with the ability to collect collateral from OCC that it may need to close out these additional transactions. While the optional feature would remain in the agreement as part of this proposal, the proposed changes to the Existing Accord, as described below, could significantly reduce the likelihood that it would be utilized.

Proposed Phase 1 Changes

The proposed changes to the Existing Accord would permit OCC to make a cash payment, referred to as the "Guaranty Substitution Payment" or "GSP," to NSCC. This cash payment could occur on either or both of the day that the Common Member becomes a Mutually Suspended Member and on the next business day. Upon NSCC's receipt of the Guaranty Substitution Payment from OCC, the NSCC Guaranty would take

effect for the Common Member's transactions, and they would be accepted by NSCC for clearance and settlement.²⁶ OCC could use all Clearing Member contributions to the OCC Clearing Fund²⁷ and certain Margin Assets²⁸ of a defaulted Clearing Member to pay the GSP, as described in more detail below.

NSCC would calculate the Guaranty Substitution Payment as the sum of the Mutually Suspended Member's unpaid required deposit to the NSCC Clearing Fund ("Required Fund Deposit")²⁹ and the unpaid Supplemental Liquidity Deposit³⁰ obligation that is attributable to E&A/Delivery Transactions. The proposed changes to the Existing Accord define how NSCC would calculate the Guaranty Substitution Payment.

More specifically, NSCC would first determine how much of the member's unpaid Clearing Fund requirement would be included in the GSP. NSCC would look at the day-over-day change in gross market value of the Mutually Suspended Member's positions as well as day-over-day change in the member's NSCC Clearing Fund requirements. Based on such changes, NSCC would identify how much of the change in the Clearing Fund requirement was attributable to E&A/Delivery Transactions coming from OCC. If 100 percent of the day-over-day change in the NSCC Clearing Fund

²⁶ Acceptance of such transactions by NSCC would be subject to NSCC's standard validation criteria for incoming trades. See NSCC Rule 7, supra note 6.

²⁷ The term "OCC Clearing Fund" as used herein has the same meaning as the term "Clearing Fund" in OCC's By-Laws, supra note 8.

²⁸ The term "Margin Assets" as used herein has the same meaning as provided in OCC's By-Laws, supra note 8.

²⁹ The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules, see supra note 6.

³⁰ Under the NSCC Rules, NSCC collects additional cash deposits from those Members who would generate the largest settlement debits in stressed market conditions, referred to as "Supplemental Liquidity Deposits" or "SLD." See Rule 4A of the NSCC Rules, supra note 6.

requirement is attributable to activity coming from OCC, then the GSP would include 100 percent of the member's NSCC Clearing Fund requirement. If less than 100 percent of the change is attributable to activity coming from OCC, then the GSP would include that percent of the member's unpaid NSCC Clearing Fund requirement attributable to activity coming from OCC. NSCC would then determine the portion of the member's unpaid SLD obligation that is attributable to E&A/Delivery Transactions. As noted above, the GSP would be the sum of these two amounts. A member's NSCC Clearing Fund requirement and SLD obligation at NSCC are designed to address the credit and liquidity risks that a member poses to NSCC. The GSP calculation is intended to assess how much of a member's obligations arise out of activity coming from OCC so that the amount paid by OCC is commensurate with the risk to NSCC of guarantying such activity.

To permit OCC to anticipate the potential resources it would need to pay the GSP for a Mutually Suspended Member, each business day, NSCC would provide OCC with (1) Required Fund Deposit and Supplemental Liquidity Deposit obligations, as calculated pursuant to the NSCC Rules, and (2) the gross market value of the E&A/Delivery Transactions and the gross market value of total Net Unsettled Positions (as such term is defined in the NSCC Rules). On options expiry days that fall on a Friday, NSCC would also provide OCC with information regarding liquidity needs and resources, and any intraday SLD requirements of Common Members. Such information would be delivered pursuant to the ongoing information sharing obligations under the Existing Accord (as proposed to be amended) and the Service Level Agreement ("SLA") to which both NSCC and OCC are a party pursuant to Section 2 of the Existing Accord.³¹ The SLA addresses specifics regarding the time, form, and manner of various required notifications

³¹ NSCC provided a draft of the revised SLA for Phase 1 to the Commission as confidential Exhibit 3E to this filing.

and actions described in the Accord and also includes information applicable under the Accord.

NSCC and OCC believe the proposed calculation of the Required Fund Deposit portion of the GSP is appropriate because it is designed to provide a reasonable proxy for the impact of the Mutually Suspended Member's E&A/Delivery Transactions on its Required Fund Deposit. While impact study data did show that the proposed calculation could result in a GSP that overestimates or underestimates the Required Fund Deposit attributable to the Mutually Suspended Member's E&A/Delivery Transactions,³² current technology constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member.³³

Implementing the ability for OCC to make the GSP and cause the E&A/Delivery Transactions to be cleared and settled through NSCC would promote the ability of OCC and NSCC to be efficient and effective in meeting the requirements of the markets they serve. This is because data demonstrates that the expected size of the GSP would be smaller than the amount of cash that would otherwise be needed by OCC and its Clearing Members to facilitate settlement outside of NSCC. More specifically, based on a historical study of alternate means of settlement available to OCC from September 2021

³² The impact study was conducted at the Commission's request to cover a three-day period and reviewed the ten Common Members with the largest Required Fund Deposits attributable to the Mutually Suspended Member's E&A/Delivery Transactions. Over the 30 instances in the study, approximately 15 instances resulted in an underestimate of the Required Fund Deposit by an average of approximately \$112,900,926, four instances where the proxy calculation was the same as the Required Fund Deposit, and eleven instances of an overestimate of the Required Fund Deposit by an average of approximately \$59,654,583. NSCC filed additional detail related to the referenced study in confidential Exhibit 3A of this filing.

³³ OCC and NSCC agreed that performing the necessary technology build during Phase 1 would delay the implementation of Phase 1 of this proposal. NSCC would incorporate those technology updates in connection with Phase 2 of this proposal.

through September 2022, in the event that NSCC did not accept E&A/Delivery Transactions, the worst-case scenario peak liquidity need OCC identified was \$384,635,833,942 for settlement to occur on a gross broker-to-broker basis. OCC estimates that the corresponding GSP in this scenario would have been \$863,619,056. OCC also analyzed several other large liquidity demand amounts that were identified during the study if OCC effected settlement on a gross broker-to-broker basis.³⁴ These liquidity demand amounts and the largest liquidity demand amount OCC observed of \$384,635,833,942 substantially exceed the amount of liquid resources currently available to OCC.³⁵ By contrast, projected GSPs identified during the study ranged from \$419,297,734 to \$6,281,228,428. For each of these projected GSP amounts, OCC observed that the Margin Assets and OCC Clearing Fund contributions that would have been required of Clearing Members in these scenarios would have been sufficient to satisfy the amount of the projected GSPs.

To help address the current technology constraint that prohibits NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member, proposed Section 6(b)(i) of the Existing Accord and related Section 7(d) of the SLA would provide that with respect to a Mutually Suspended Member, either NSCC or OCC may require that the Required Fund Deposit portion of the GSP be re-calculated by calculating the Required Fund Deposit for the Mutually Suspended Member both before and after the delivery of the E&A/Delivery Transactions and utilize the precise amount that is attributable to that activity in the final GSP. If such a recalculation is required, the result would replace the Required Fund Deposit component of the GSP that was initially

³⁴ OCC filed additional detail related to the referenced study as an exhibit to the OCC Filings.

³⁵ As of September 30, 2023, OCC held approximately \$12.37 billion in qualifying liquid resources. See OCC Quantitative Disclosure, July – September 2023, available at www.theocc.com/risk-management/pfmi-disclosures.

calculated. The SLD component of the GSP would be unchanged by such recalculation.

As the above demonstrates, the GSP is intended to address the significant collateral and liquidity requirements that could be required of OCC Clearing Members in the event of a Common Member default. Allowing OCC to make a GSP payment also is intended to allow for settlement processing to take place through the facilities of NSCC to retain operational efficiencies associated with the settlement process. Alternative settlement means such as broker-to-broker settlement add operational burdens because transactions would need to be settled individually on one-off bases. In contrast, NSCC's netting reduces the volume and value of settlement obligations that would need to be closed out in the market.³⁶ Because the clearance and settlement of obligations through NSCC's facilities following a Common Member default, including netting of E&A/Delivery Transactions with a Common Member's positions at NSCC, would avoid these potentially significant operational burdens for OCC and its Clearing Members, OCC and NSCC believe that the proposed changes would limit market disruption relating to a Common Member default. NSCC netting significantly reduces the total number of obligations that require the exchange of money for settlement. Allowing more activity to be processed through NSCC's netting systems would minimize risk associated with the close out of those transactions following the default of a Common Member.

Amending the Existing Accord to define the terms and conditions under which Guaranty Substitution may occur, at OCC's election, with respect to Defaulted NSCC Member Transactions *after* a Common Member becomes a Mutually Suspended Member would also provide more certainty to both the Clearing Agencies and market participants generally about how a Mutually Suspended Member's Defaulted NSCC Member

³⁶ CNS reduces the value of obligations that require financial settlement by approximately 98%, where, for example \$519 trillion in trades could be netted down to approximately \$9 trillion in net settlements.

Transactions may be processed.

NSCC and OCC have agreed it is appropriate to limit the availability of the proposed provision to the day of the Common Member default and the next business day because, based on historical simulations of cease to act events involving Common Members, most activity of a Mutually Suspended Member is closed out on those days.³⁷ Furthermore, the benefits of netting through NSCC's systems would be reduced for any activity submitted to NSCC after that time.

To implement the proposed Phase 1 changes to the Existing Accord, OCC and NSCC propose to make the following changes.

Section 1 – Definitions

First, new definitions would be added, and existing definitions would be amended in Section 1, which is the Definitions section.

The new defined terms would be as follows.

- The term “Close Out Transaction” would be defined to mean “the liquidation, termination or acceleration of one or more exercised or matured Stock Options³⁸ or Stock Futures³⁹ contracts, securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, master netting agreements or similar agreements of a Mutually Suspended Member pursuant to OCC Rules 901, 1006 and 1101 through 1111 (including but not limited to Rules 1104 and 1107) and/or NSCC Rule 18.” This proposed definition would make it clear that the payment of the Guaranty Substitution

³⁷ OCC filed data regarding simulated events as an exhibit to the OCC Filings.

³⁸ The term “Stock Options” is defined in the Existing Accord within the definition of “Eligible Securities” and refers to options issued by OCC.

³⁹ The term “Stock Futures” is defined in the Existing Accord within the definition of “Eligible Securities” and refers to stock futures contracts cleared by OCC.

Payment and NSCC's subsequent acceptance of Defaulted NSCC Member Transactions for clearance and settlement are intended to fall within the "safe harbors" provided in the Bankruptcy Code,⁴⁰ the Securities Investor Protection Act,⁴¹ and other similar laws.

- The term "Guaranty Substitution Payment" would be defined to mean "an amount calculated by NSCC in accordance with the calculations set forth in Appendix A [to the Existing Accord (as proposed to be amended)], to include two components: (i) a portion of the Mutually Suspended Member's Required Fund Deposit deficit to NSCC at the time of the cease to act; and (ii) a portion of the Mutually Suspended Member's unpaid Supplemental Liquidity Deposit obligation at the time of the cease to act."
- The term "Mutually Suspended Member" would mean "any OCC Participating Member⁴² that has been suspended by OCC that is also an NSCC Participating Member⁴³ for which NSCC has ceased to act."

⁴⁰ 11 U.S.C. § 101 et seq., including §§362(b)(6), (7), (17), (25) and (27) (exceptions to the automatic stay), §§546(e) – (g) and (j) (limitations on avoiding powers), and §§555 – 556 and 559 – 562 (contractual right to liquidate, terminate or accelerate certain contracts).

⁴¹ 15 U.S.C. §§ 78aaa – III, including §78eee(b)(2)(C) (exceptions to the stay).

⁴² The term "OCC Participating Member" is defined in the Existing Accord to mean "(i) a Common Member; (ii) an OCC Clearing Member that is an 'Appointing Clearing Member' (as defined in Article I of OCC's By-Laws) and has appointed an Appointed Clearing Member that is an NSCC Member to effect settlement of E&A/Delivery Transactions through NSCC on the Appointing Clearing Member's behalf; (iii) an OCC Clearing Member that is an Appointed Clearing Member; or (iv) a Canadian Clearing Member." No changes are proposed to this definition.

⁴³ The term "NSCC Participating Member" is defined in the Existing Accord to mean "(i) a Common Member; (ii) an NSCC Member that is an 'Appointed Clearing Member' (as defined in Article I of OCC's By-Laws); or (iii) [Canadian Depository for Securities Limited or "CDS"]]. For the avoidance of doubt, the Clearing Agencies agree that CDS is an NSCC Member for purposes of this Agreement." No changes are proposed to this definition.

- The term “Required Fund Deposit” would have the meaning “provided in Rule 4 of NSCC’s Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.”
- The term “Supplemental Liquidity Deposit” would have the meaning “provided in Rule 4A of NSCC’s Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.”

The defined terms that would be amended in Section 1 of the Existing Accord are as follows.

- The definition for the term “E&A/Delivery Transaction” generally contemplates a transaction that involves a delivery and receipt of stock in the settlement of physically-settled options and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC. The definition would be amended to make clear that it would apply in respect of a “Close Out Transaction” of a “Mutually Suspended Member” as those terms are proposed to be defined (described above).
- The definition for the term “Eligible Securities” generally contemplates the securities that are eligible to be used for physical settlement under the Existing Accord. The term would be modified to clarify that this may include, for example, equities, exchange-traded funds and exchange-traded notes that are underlying securities for options issued by OCC.

Section 6 – Default by an NSCC Participating Member or OCC Participating Member

Section 6 of the Existing Accord provides that NSCC is required to provide certain notice to OCC in circumstances in which NSCC has ceased to act for a Common Member. Currently, Section 6(a)(ii) of the Existing Accord also requires NSCC to notify OCC if a Common Member has failed to satisfy its Clearing Fund obligations to NSCC, but for which NSCC has not yet ceased to act. In practice, this provision would trigger a number of obligations (described below) when a Common Member fails to satisfy its NSCC Clearing Fund obligations for any reason, including those due to an operational delay. Therefore, OCC and NSCC are proposing to remove the notification requirement under Section 6(a)(ii) from the Existing Accord. Under Section 7(d) of the Existing Accord, NSCC and OCC are required to provide each other with general surveillance information regarding Common Members, which includes information regarding any Common Member that is considered by the other party to be in distress. Therefore, if a Common Member has failed to satisfy its NSCC Clearing Fund obligations and NSCC believes this failure is due to, for example, financial distress and not, for example, due to a known operational delay, and NSCC has not yet ceased to act for that Common Member, such notification to OCC would still occur but would be done pursuant to Section 7(d) of the Existing Accord (as proposed to be amended), and not Section 6(a)(ii). Notifications under Section 6 of the Existing Accord (as proposed to be amended) would be limited to instances when NSCC has actually ceased to act for a Common Member pursuant to the NSCC Rules.⁴⁴

Following notice by NSCC that it has ceased to act for a Common Member, OCC is obligated in turn to deliver to NSCC a list of all E&A/Delivery Transactions (excluding

⁴⁴ See Rule 46 (Restrictions on Access to Services) of the NSCC Rules, supra note 6.

certain transactions for which Guaranty Substitution does not occur) involving the Common Member.⁴⁵ This provision would be amended to clarify that it applies in respect of such E&A/Delivery Transactions for the Common Member for which the NSCC Guaranty has not yet attached – meaning that Guaranty Substitution has not yet occurred.

As described above in the summary of the Existing Accord, where NSCC has ceased to act for a Common Member, the Existing Accord refers to the Common Member as the Defaulting NSCC Member and also refers to the relevant E&A/Delivery Transactions in connection with that Defaulting NSCC Member for which a Guaranty Substitution has not yet occurred as Defaulted NSCC Member Transactions.

If the Defaulting NSCC Member is also suspended by OCC, it would be covered by the proposed definition that is described above for a Mutually Suspended Member. For such a Mutually Suspended Member, the proposed changes in Section 6(b) would provide that NSCC, by a time agreed upon by the parties, would provide OCC with the amount of the Guaranty Substitution Payment as calculated by NSCC and related documentation regarding the calculation. The Guaranty Substitution Payment would be calculated pursuant to NSCC's Rules as that portion of the unmet Required Fund Deposit⁴⁶ and Supplemental Liquidity Deposit⁴⁷ obligations of the Mutually Suspended Member attributable to the Defaulted NSCC Member Transactions. By a time agreed upon by the parties,⁴⁸ OCC would then be required to either notify NSCC of its intent to

⁴⁵ The section of the Existing Accord that addresses circumstances in which NSCC ceases to act and/or an NSCC Member defaults is currently part of Section 6(a). It would be re-designated as Section 6(b) for organizational purposes.

⁴⁶ The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules, see supra note 6.

⁴⁷ The Supplemental Liquidity Deposit is calculated pursuant to Rule 4A (Supplemental Liquidity Deposits) of the NSCC Rules, see supra note 6.

⁴⁸ The time by which OCC would be required to notify NSCC of its intent would be defined in the Service Level Agreement. As of the time of this filing, the parties

make the full amount of the Guaranty Substitution Payment to NSCC or notify NSCC that it will not make the Guaranty Substitution Payment. If OCC makes the full amount of the Guaranty Substitution Payment, NSCC's guaranty would take effect at the time of NSCC's receipt of that payment and the OCC Guaranty would end.

The proposed changes would further provide that if OCC does not suspend the Common Member (such that the Common Member would therefore not meet the proposed definition of a Mutually Suspended Member) or if OCC elects to not make the full amount of the Guaranty Substitution Payment to NSCC, then all of the Defaulted NSCC Member Transactions would be exited from NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation, as applicable, and Guaranty Substitution would not occur in respect thereof. Therefore, NSCC would continue to have no obligation to guarantee or settle the Defaulted NSCC Member Transactions, and the OCC Guaranty would continue to apply to them pursuant to OCC's By-Laws and Rules.⁴⁹

Proposed changes to the Existing Accord would also address the application of any Guaranty Substitution Payment by NSCC. Specifically, new Section 6(d) would provide that any Guaranty Substitution Payment made by OCC may be used by NSCC to satisfy any liability or obligation of the Mutually Suspended Clearing Member to NSCC on account of transactions involving the Mutually Suspended Clearing Member for which the NSCC Guaranty applies and to the extent that any amount of assets otherwise held by NSCC for the account of the Mutually Suspended Member (including any Required Fund Deposit or Supplemental Liquidity Deposit) are insufficient to satisfy its obligations

intend to set that time as one hour after OCC's receipt of the calculated Guaranty Substitution Payment from NSCC.

⁴⁹ Under the current and proposed terms of the Existing Accord, NSCC would be permitted to voluntarily guaranty and settle the Defaulted NSCC Member Transactions.

related to transactions for which the NSCC Guaranty applies. Proposed changes to Section 6(d) would further provide for the return to OCC of any unused portion of the GSP. With regard to the portion of the Guaranty Substitution Payment that corresponds to a member's Supplemental Liquidity Deposit obligation, NSCC must return any unused amount to OCC within fourteen (14) days following the conclusion of NSCC's settlement, close-out and/or liquidation. With regard to the portion of the Guaranty Substitution Payment that corresponds to a Required Fund Deposit, NSCC must return any unused amount to OCC under terms agreed to by the parties.⁵⁰

Other Proposed Changes as Part of Phase 1

Certain other technical changes are also proposed to the Existing Accord to conform it to the proposed changes described above. For example, the preamble and the "whereas" clauses in the Preliminary Statement would be amended to clarify that the agreement is an amended and restated agreement and to summarize that the agreement would be modified to contemplate the Guaranty Substitution Payment structure. Section 1(c), which addresses the terms in the Existing Accord that are defined by reference to NSCC's Rules and Procedures and OCC's By-Laws and Rules would be modified to state that such terms would have the meaning then in effect at the time of any transaction or obligation that is covered by the agreement rather than stating that such terms have the meaning given to them as of the effective date of the agreement. This change is proposed to help ensure that the meaning of such terms in the agreement will not become inconsistent with the meaning in the NSCC Rules and/or OCC By-Laws and Rules, as they may be modified through proposed rule changes with the Commission.

Technical changes would be made to Sections 3(d) and (e) of the Existing Accord

⁵⁰ Such amounts would be returned to OCC as appropriate and in accordance with a Netting Contract and Limited Cross-Guaranty, by and among The Depository Trust Company, Fixed Income Clearing Corporation, NSCC and OCC, dated as of January 1, 2003, as amended.

to provide that those provisions would not apply in the event new Section 6(b) described above, is triggered. Section 3(d) generally provides that OCC will no longer submit E&A/Delivery Transactions to NSCC involving a suspended OCC Participating Member.⁵¹ Similarly, Section 3(e) generally provides that OCC will no longer submit E&A/Delivery Transactions to NSCC involving an NSCC Participating Member⁵² for which NSCC has ceased to act. A proposed change would also be made to Section 5 of the Existing Accord to modify a reference to Section 5 of Article VI of OCC's By-Laws to instead provide that the updated cross-reference should be to Chapter IV of OCC's Rules.

Section 5 would also be amended to clarify that Guaranty Substitution occurs when NSCC has received both the Required Fund Deposit and Supplemental Liquidity Deposit, as calculated by NSCC in its sole discretion, from Common Members. The addition of the collection of the Supplemental Liquidity Deposit to the definition of the Guaranty Substitution Time in this Section 5 would reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment (as described above) and would make this definition consistent with that agreement.

In Section 7 of the Existing Accord, proposed changes would be made to provide that NSCC would provide to OCC information regarding a Common Member's Required Fund Deposit and Supplemental Liquidity Deposit obligations, to include the Supplemental Liquidity Deposit obligation in this notice requirement, and additionally that NSCC would provide OCC with information regarding the potential Guaranty Substitution Payment for the Common Member. On an options expiration date that is a Friday, NSCC would, by close of business on that day, also provide to OCC information

⁵¹ See supra note 42 defining OCC Participating Member.

⁵² See supra note 43 defining NSCC Participating Member.

regarding the intra-day liquidity requirement, intra-day liquidity resources and intra-day calls for a Common Member that is subject to a Supplemental Liquidity Deposit at NSCC.

Finally, Section 14 of the Existing Accord would be modernized to provide that notices between the parties would be provided by e-mail rather than by hand, overnight delivery service or first-class mail.

Proposed Phase I Changes to NSCC Rules

In connection with the proposed changes to the Existing Accord, NSCC is also proposing changes to its Rules, described below.

First, NSCC would amend Rule 18 (Procedures for When the Corporation Ceases to Act), which describes the actions NSCC would take with respect to the transactions of a Member after NSCC has ceased to act for that Member.⁵³ The proposed changes would include a new Section 9(a) to specify that following a Member default, NSCC may continue to act and provide the NSCC Guaranty pursuant to a “Close-Out Agreement” such as the Existing Accord (as it is proposed to be amended);⁵⁴ a new Section 9(b) to specify that any transactions undertaken pursuant to a Close-Out Agreement would be treated as having been received, provided or undertaken for the account of the Member for which NSCC has ceased to act, but that any deposit, payment, financial assurance or other accommodation provided to NSCC pursuant to a Close-Out Agreement shall be returned or released as provided for in the agreement; and a new Section 9(c), to provide that NSCC shall have a lien upon, and may apply, any property of the defaulting Member in satisfaction of any obligation, liability or loss that relates to a transaction undertaken or service provided pursuant to a Close-Out Agreement.

⁵³ See supra note 6.

⁵⁴ The Existing Accord is currently the only agreement that would be considered a “Close-Out Agreement” under this new Section 9(b).

NSCC would also propose clarifications to Sections 4, 6(b)(iii)(B) and 8 to use more precise references to the legal entity described in those sections of this Rule.

Second, NSCC would amend Section B of Procedure III and Addendum K of the NSCC Rules⁵⁵ to provide that the NSCC Guaranty would not attach to Defaulted NSCC Member Transactions except as provided for in the Existing Accord (as it is proposed to be amended), and that the NSCC Guaranty attaches, with respect to obligations arising from the exercise or assignment of OCC options settled at NSCC or stock futures contracts cleared by OCC, as provided for in the Existing Accord (as it is proposed to be amended) or other arrangement with OCC. Finally, the proposed changes to Procedure III would clarify that Guaranty Substitution occurs when NSCC has received both the Required Fund Deposit and Supplemental Liquidity Deposit, consistent with the proposed revisions to Section 5 of the Current Accord, described above. As noted above, the proposal to include the collection of the Supplemental Liquidity Deposit in connection with the Guaranty Substitution reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment. NSCC also proposes to make a number of non-substantive clean up changes to Procedure III, such as correcting references to NSCC's "guaranty."

Collectively, these proposed changes would establish and clarify the rights of both NSCC and a Member for which NSCC has ceased to act with respect to property held by NSCC and the operation and applicability of any Close-Out Agreement, and would make it clear that any payments received pursuant to a Close-Out Agreement and NSCC's acceptance of a Mutually Suspended Member's transactions for clearance and settlement pursuant to a Close-Out Agreement are intended to fall within the Bankruptcy Code and Securities Investor Protection Act "safe harbors."

⁵⁵ See id.

Proposed Phase 2 Changes

On February 15, 2023, the Commission adopted amendments to Rule 15c6-1(a) under the Act⁵⁶ to shorten the standard settlement cycle for most broker-dealer transactions in securities from T+2 to T+1. In doing so, the Commission stated that a shorter settlement cycle “can promote investor protection, reduce risk, and increase operational and capital efficiency.”⁵⁷ Moreover, the Commission stated that delaying the move to a shorter settlement cycle would “allow undue risk to continue to exist in the U.S. clearance and settlement system”⁵⁸ and that it “believes that the May 28, 2024, compliance date will help ensure that market participants have sufficient time to implement the changes necessary to reduce risk, such as risks associated with the potential for increases in settlement fails.”⁵⁹ The Phase 2 changes proposed herein serve those risk reduction objectives related to securities settlements by endeavoring to limit market disruption following a Common Member default. The proposed changes would allow OCC to provide certain assurances with respect to its ability to make a GSP in the event of a Common Member default to NSCC in a shortened settlement cycle, which would permit NSCC to begin processing E&A/Delivery Transactions prior to Guaranty Substitution occurring. This, in turn, would promote settlement through NSCC that is less operationally complex and would be expected to require less collateral and liquidity from market participants than if OCC engaged in the alternative settlement processes discussed above.

To address the operational realities concerning the Accord that will result from

⁵⁶ 17 CFR 240.15c6-1.

⁵⁷ Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872, 13873 (Mar. 6, 2023).

⁵⁸ Id. at 13881.

⁵⁹ Id. at 13917.

the Commission's adoption and implementation of a new standard settlement cycle of T+1 pursuant to Rule 15c6-1(a) under the Act, OCC and NSCC are proposing Phase 2 changes to further modify the Accord after the T+1 settlement cycle becomes effective. As described in greater detail below, the Phase 2 changes would allow the GSP and other changes that are part of the Phase 1 changes to continue to function appropriately and efficiently in the new T+1 settlement environment. Because of the phased approach, a separate mark-up is provided in confidential Exhibit 4A of the Phase 2 changes against the Accord as modified through the Phase 1 changes.

As described in more detail below, shortening the settlement cycle to T+1 will require NSCC to process stock settlement obligations arising from E&A/Delivery Transactions one day earlier, i.e., on the day after the trade date, than is currently the case. Moving processing times ahead by a full day will require processing to occur before the guaranty transfers from OCC to NSCC.⁶⁰

In this new T+1 processing environment, the Phase 2 changes would limit market disruption following a Common Member default because the Phase 2 changes would allow OCC to provide certain assurances with respect to its ability to make a GSP in the event of a Common Member default to NSCC that would permit NSCC to begin processing the defaulting Common Member's E&A/Delivery Transactions prior to Guaranty Substitution occurring. This, in turn, would promote settlement through NSCC that is less operationally complex and would be expected to require less collateral and liquidity from market participants than if OCC engaged in alternative settlement processes. The specific changes included in Phase 2 are described below. The changes

⁶⁰ Given the reduction in the settlement cycle and existing processes that must be completed for settlement, NSCC would not be able to safely compress its processing times further to allow processing to occur after the guaranty transfers from OCC to NSCC. NSCC provided proposed processing timelines in confidential Exhibit 3D to this filing.

would facilitate the continued ability of the GSP to function in an environment with a shorter settlement cycle. These changes are generally designed to allow OCC to provide certain assurances with respect to its ability to make a GSP in the event of a Common Member default to NSCC that would permit NSCC to begin processing E&A/Delivery Transactions prior to Guaranty Substitution occurring by introducing new or amended terms and setting out the processes associated therewith. All of the descriptions below explain the changes to the Accord as they would be made after the Accord has already been modified through prior implementation of the proposed Phase 1 changes.

Section 1 – Definitions

First, new definitions would be added, and existing definitions would be amended or removed in Section 1.

The new defined terms would be as follows.

- The term “GSP Monitoring Data” would be defined to mean a set of margin and liquidity-related data points provided by NSCC on each Activity Date prior to the submission of E&A/Delivery Transactions by OCC to be used for informational purposes at OCC and NSCC.
- The term “Final Guaranty Substitution Payment” would be defined to mean an amount calculated by NSCC for each Settlement Date in accordance with Appendix A to the Accord, to include two components: (i) a portion of the NSCC Participating Member’s⁶¹ Required Fund Deposit deficit to NSCC calculated as a difference between the Required Fund Deposit deficit calculated on the NSCC Participating Member’s entire portfolio and the Required Fund Deposit deficit calculated on the NSCC Participating Member’s portfolio prior to submission of the E&A/Delivery Transactions;

⁶¹ See supra note 43.

and (ii) the portion of the NSCC Participating Member's unpaid Supplemental Liquidity Deposit obligation attributable to the additional activity to be guaranteed.

- The term "Historical Peak Guaranty Substitution Payment" would be defined to mean the largest Final Guaranty Substitution Payment for an NSCC Participating Member and its affiliates that are also NSCC Participating Members over the 12 months immediately preceding the Activity Date, to include two components: (i) the Required Fund Deposit deficits associated with E&A/Delivery Transactions based on peak historical observations of the largest NSCC Participating Member and its affiliates that are also NSCC Participating Members; and (ii) the Supplemental Liquidity Deposit obligations associated with E&A/Delivery Transactions based on peak historical observations as calculated in accordance with applicable NSCC or OCC Rules and procedures.
- The term "Qualifying Liquid Resources" would be defined to have the meaning provided by Rule 17Ad-22(a)(14) of the Exchange Act, 17 CFR 240.17Ad-22(a)(14), or any successor Rule under the Exchange Act.
- The term "Settlement Date" would be defined to mean the date on which an E&A/Delivery Transaction is designated to be settled through payment for, and delivery of, the Eligible Securities underlying the exercised Stock Option⁶² or matured Stock Future,⁶³ as the case may be.
- The term "Weekday Expiration" would be defined to mean any expiration for which the options expiration date occurs on a date other than a Friday or for

⁶² See supra note 38.

⁶³ See supra note 39.

which the Settlement Date is any date other than the first business date following a weekend.

- The term “Weekend Expiration” would be defined to mean any expiration for which the options expiration date occurs on a Friday or for which the Settlement Date is the first business date following a weekend.

The defined term that would be removed in Section 1 is as follows.

- “Guaranty Substitution Payment,” which would be replaced by the new defined terms “Final Guaranty Substitution Payment” and “Historical Peak Guaranty Substitution Payment.”

The defined terms that would be amended in Section 1 are as follows.

- The definition for the term “Eligible Securities” generally contemplates the securities that are eligible to be used for physical settlement under the Existing Accord. In Phase 2, the term would be modified to exclude any transactions settled through NSCC’s Balance Order System and any security undergoing a voluntary corporate action that is being supported by NSCC’s CNS system. This is because the processing of E&A/Delivery Transactions and potential reversals of such transactions under the Phase 2 changes would not be feasible under the anticipated operation of NSCC’s CNS and Balance Order Accounting Operations under the shortened T+1 settlement cycle.

Section 3 – Historical Peak Guaranty Substitution Payment

A new Section 3 would be added to describe the process by which OCC would send to NSCC evidence of sufficient funds to cover the Historical Peak Guaranty Substitution Payment. In particular, Section 3(a) would provide that on each Activity Date, at or before a time agreed upon by the Clearing Agencies (which may be modified on any given Activity Date with the consent of an authorized representative of OCC), NSCC will communicate to OCC the amount of the Historical Peak Guaranty

Substitution Payment amount and the GSP Monitoring Data, which are to be used by OCC for informational purposes. The Historical Peak Guaranty Substitution Payment would reflect the largest GSP of the NSCC Participating Member and its affiliates over the prior twelve months and would be calculated based on the sum of the Required Fund Deposit deficits and Supplemental Liquidity Deposit associated with E&A/Delivery Transactions. Section 3(b) would provide that OCC would then submit to NSCC an acknowledgement of the Historical Peak Guaranty Substitution Payment amount and evidence that OCC has sufficient cash resources in the OCC Clearing Fund to cover the Historical Peak Guaranty Substitution Payment. Section 3(c) would provide that if OCC does not provide NSCC with evidence within the designated time period that it has sufficient cash resources in the OCC Clearing Fund to cover the Historical Peak Guaranty Substitution Payment on the Activity Date, OCC will immediately contact NSCC to escalate discussions to discuss potential exposures and determine, among other things, whether OCC has other qualifying liquidity resources available to satisfy such amount.

As described above, the Historical Peak Guaranty Substitution Payment is designed to serve as a reasonable proxy for the largest potential Final Guaranty Substitution Payment. Its purpose is to allow OCC to provide evidence that it likely will be able to satisfy the Final Guaranty Substitution Payment in the event of a Common Member default, which will provide NSCC with reasonable assurances such that NSCC can begin processing E&A/Delivery Transactions upon receipt and prior to the Guaranty Substitution occurring, which will minimize the probability of reversals in a default event in light of the shortened settlement cycle. The Historical Peak Guaranty Substitution Payment amount also will provide OCC with information that will allow OCC to include the amount of a potential GSP in its liquidity resource planning.

Section 6 – Final Guaranty Substitution Payment; OCC’s Commitment

A new Section 6 would be added to provide the process by which NSCC would communicate the amount of, and OCC would commit to pay, the Final Guaranty Substitution Payment. In particular, Section 6(a) would provide that on each Settlement Date (or each Saturday for Weekend Expirations), by no later than the time(s) agreed upon by NSCC and OCC, NSCC will communicate to OCC the Final Guaranty Substitution Payment for each Common Member calculated by NSCC. NSCC would make such calculation according to a calculation methodology described in a new Appendix A to the Accord. This calculation would represent the sum of the Required Fund Deposit⁶⁴ and the Supplemental Liquidity Deposit⁶⁵ for the Common Member. As with the Phase 1 Accord, payment of the Final Guaranty Substitution Payment would be contingent on the mutual suspension of the Common Member and payment of the Final Guaranty Substitution Payment would continue to be the means by which Guaranty Substitution may occur.

Section 6(b) would provide that, following NSCC's communication of the Final Guaranty Substitution Payment for each Common Member to OCC, and by no later than the agreed upon time, OCC must either (i) commit to NSCC that it will pay the Final Guaranty Substitution Payment in the event of a mutual suspension of a Common

⁶⁴ The Required Fund Deposit is the portion of the defaulted Common Member's Required Fund Deposit deficit to NSCC, calculated as a difference between the Required Fund Deposit deficit calculated on the entire portfolio and the Required Fund Deposit deficit calculated on the Common Member's portfolio prior to the submission of E&A/Delivery Transactions. The Phase 2 changes would refine the existing calculation methodology for the Required Fund Deposit in order to provide for a more accurate amount.

⁶⁵ If NSCC calculates a liquidity shortfall with respect to a defaulted Common Member, the Supplemental Liquidity Deposit is the portion of that shortfall that is attributable to the additional activity to be guaranteed.

Member,⁶⁶ or (ii) notify NSCC that it will not have sufficient cash resources to pay the largest Final Guaranty Substitution Payment calculated for every Common Member.

Section 6(b)(i) would further provide that for Weekday Expirations, OCC's submission of E&A/Delivery Transactions to NSCC would constitute OCC's commitment to pay the Final Guaranty Substitution Payment on the Settlement Date in the event of a mutual suspension of a Common Member.

Section 6(c) would provide that if OCC notifies NSCC that it will not have sufficient cash resources to pay the Final Guaranty Substitution Payment, NSCC may, in its sole discretion (i) reject or reverse all E&A/Delivery Transactions, or (ii) voluntarily accept E&A/Delivery Transactions subject to certain terms and conditions mutually agreed upon by NSCC and OCC.⁶⁷ Section 6(c) would also provide that any necessary reversals of E&A/Delivery Transactions shall be delivered by NSCC to OCC at such time and in such form as the Clearing Agencies agree.

Section 6(d) would provide that if, at any time after OCC has acknowledged the Historical Peak Guaranty Substitution Payment in accordance with proposed Section 3(b) of the Accord or committed to pay the Final Guaranty Substitution Payment in accordance with proposed Section 6(b) of the Accord, OCC has a reasonable basis to believe it will be unable to pay the Final Guaranty Substitution Payment, OCC will immediately notify NSCC.

⁶⁶ If OCC does not have sufficient cash to pay the Final GSP, then it must confirm for NSCC the availability of other qualifying liquid resources and the expecting timeline for converting such resources to cash.

⁶⁷ Such terms and conditions may include, but would not be limited to, OCC's agreement to (i) pay NSCC available cash resources in partial satisfaction of the Final Guaranty Substitution Payment; (ii) collect or otherwise source additional resources that would constitute NSCC Qualifying Liquid Resources to pay the full Final Guaranty Substitution Payment amount; and/or (iii) reimburse NSCC for any losses associated with closing out such E&A/Delivery Transactions.

Section 8 – Default by an NSCC Participating Member or OCC Participating Member

Section 6(b)(i), which would be renumbered as Section 8(b)(i), would be amended to reflect the modified use of the Final Guaranty Substitution Payment in the event of a mutual suspension of a Common Member. Section 8(b)(i) would also be revised to remove the ability for OCC or NSCC to require that the Guaranty Substitution Payment be re-calculated in accordance with an alternative methodology. This would not be necessary under the calculation methodology used in the Phase 2 changes because the proposed methodology would result in a more accurate calculation. Section 8(b)(i) would further amend the Accord by providing NSCC with discretion to voluntarily accept Defaulted NSCC Member Transactions and assume the guaranty for such transactions, subject to certain terms and conditions mutually agreed upon by NSCC and OCC. The only remaining change to the Guaranty Substitution process from its operation under the Accord would be the shortened time duration under which OCC would elect (by way of its commitment) to make the Final Guaranty Substitution Payment and the timing under which the Guaranty Substitution would be processed in order to function in a T+1 environment.

In particular, Section 8(b)(i) would provide that, with respect to a Mutually Suspended Member, if OCC has committed to make the Final Guaranty Substitution Payment, it will make such cash payment in full by no later than the agreed upon time(s). Upon NSCC's receipt of the full amount of the Final Guaranty Substitution Payment, NSCC's Guaranty would attach (and OCC's Guaranty will no longer apply) to the Defaulted NSCC Member Transactions. NSCC would have no obligation to accept a Final Guaranty Substitution Payment and attach the NSCC Guaranty to any Defaulted NSCC Member Transactions for more than the Activity Date on which it has ceased to act for that Mutually Suspended Member and one subsequent Activity Date. If NSCC does not receive the full amount of the Final Guaranty Substitution Payment in cash by

the agreed upon time, the Guaranty Substitution Time would not occur with respect to the Defaulted NSCC Member Transactions and Section 8(b)(ii), described below, would apply. NSCC would, however, have discretion to voluntarily accept Defaulted NSCC Member Transactions and assume the guaranty for such transactions, subject to certain terms and conditions mutually agreed upon by NSCC and OCC.

Section 6(b)(ii), which would be renumbered as Section 8(b)(ii), would also be amended to reflect the modified use of the Final Guaranty Substitution Payment in the event OCC continues to perform or does not make the Final Guaranty Substitution Payment. In particular, Section 8(b)(ii) would add an additional criterion of OCC not satisfying any alternative agreed upon terms for Guaranty Substitution to reflect this as an additional option under the Phase 2 changes. As amended, Section 8(b)(ii) would provide that if OCC does not suspend an OCC Participating Member for which NSCC has ceased to act, OCC does not commit to make the Final Guaranty Substitution Payment, NSCC does not receive the full amount of the Final Guaranty Substitution Payment in cash by the agreed upon time, or OCC does not satisfy any alternative agreed upon terms for Guaranty Substitution, Guaranty Substitution with respect to all Defaulted NSCC Member Transactions for that Activity Date will not occur, all Defaulted NSCC Member Transactions for that Activity Date will be reversed and exited from NSCC's CNS accounting system, and NSCC will have no obligation to guaranty or settle such Defaulted NSCC Member Transactions. NSCC may, however, exercise its discretion to voluntarily accept the Defaulted NSCC Member Transactions, and assume the guaranty for such transactions, subject to certain agreed upon terms and conditions.

Section 8(b) would also be modified to provide for escalated discussion between the Clearing Agencies in the event of an intraday NSCC Cease to Act and/or NSCC Participating Member Default, particularly to confirm that OCC has sufficient qualifying liquid resources to pay the projected Final Guaranty Substitution Payment for the

Defaulting NSCC Member's projected E&A/Delivery Transactions based on information provided in GSP Monitoring Data for such Defaulting NSCC Member.

Conforming changes would also be made to Section 8(d) to reflect the use of the new defined term "Final Guaranty Substitution Payment."

Other Proposed Changes as Part of Phase 2

Certain other technical changes are also proposed as part of the Phase 2 changes, including to conform the Accord to the proposed changes described above. For example, Section 9(c) would be revised regarding information sharing to reflect the introduction of the Historical Peak and Final Guaranty Substitution Payments and the GSP Monitoring Data; Section 4(c)(ix) would be conformed to reflect the addition of "Settlement Date" as a defined term in Section 1; various sections would be renumbered and internal cross-references would be adjusted to reflect the addition of new sections proposed herein; correct current references throughout the Accord to "NSCC Rules and Procedures" would be changed to simply read "the NSCC Rules;" and various non-substantive textual changes would be made to increase clarity.

Section 4(a) would also be modified to reflect that the Eligibility Master Files referenced in that paragraph, which identify Eligible Securities to OCC, are described in the SLA between OCC and NSCC. Section 9(b) would be modified to include OCC's available liquidity resources, including Clearing Fund cash balances in the information OCC provides to NSCC and to specify that information will be provided on each Activity Date at an agreed upon time and in an agreed upon form by the Clearing Agencies. Finally, Section 16(b) would be modified to provide the correct current delivery address information for NSCC.

The Phase 2 changes would also include an Appendix A that would describe in detail the calculation methodology for the Guaranty Substitution Payment. This would provide the detailed technical calculation to determine each of the Mutually Suspended

Member's Required Fund Deposit deficit and liquidity shortfall to NSCC. The full text of Appendix A is filed confidentially with the Commission in Exhibit 5B to this filing.

Phase 2 Guaranty Substitution Process Changes

As described above, the Phase 2 changes would modify the Guaranty Substitution process to reflect the shortened time duration under which the Guaranty Substitution will be processed in order to function in a T+1 environment. Below is a description of how that process would operate. The actual process would be implemented pursuant to a modified SLA between the Clearing Agencies.⁶⁸ All times provided below are in Eastern Time and represent the latest time by which the specified action must occur unless otherwise agreed by the Clearing Agencies.

Weekend Expirations: On Friday (the Activity Date), NSCC would provide OCC with the Historical Peak GSP amount by 8:00 AM. By 5:00 PM on Friday, OCC must acknowledge the Historical Peak GSP and provide evidence of OCC's Clearing Fund cash resources sufficient to cover that amount, following which NSCC would provide the Eligibility Master File by 5:45 PM. By 1:00 AM on Saturday, OCC would then provide NSCC with the E&A/Delivery Transactions file and by 8:00 AM NSCC would provide OCC with the Final GSP, which OCC must commit to pay by 9:00 AM in the event of a mutual suspension of a Common Member.⁶⁹ By 8:00 AM Monday (the Settlement Date) if a cease to act is declared over the weekend (or the later of 10:00 AM or one hour after the cease to act is declared if declared on Monday), OCC must pay the Final GSP if there

⁶⁸ NSCC provided a draft of the revised Phase 2 SLA illustrating such changes to the Commission in confidential Exhibit 3F to this filing.

⁶⁹ If OCC does not have sufficient cash resources to pay the Final GSP and the Clearing Agencies are unable to reach an agreement on additional terms for NSCC to accept E&A/Delivery Transactions, OCC must submit a reversal file by 12:30 AM on Monday so that NSCC can remove the E&A/Delivery Transactions from CNS prior to the start of NSCC's overnight processing. NSCC has included additional details on action deadlines and processing times in confidential Exhibit 3D of this filing.

has been a mutual suspension of a Common Member. Finally, by 1:00 PM on Monday, OCC must provide reversals for the defaulted member's E&A/Delivery Transactions if OCC has not satisfied (or will not satisfy) the Final GSP.

Weekday Expirations: On the Activity Date, NSCC would provide OCC with the Historical Peak GSP amount by 8:00 AM. By 5:00 PM on the Activity Date, OCC must acknowledge the Historical Peak GSP and provide evidence of its cash resources in the OCC Clearing Fund sufficient to cover that amount, following which NSCC would provide the Eligibility Master File by 5:45 PM. By 1:00 AM on the Settlement Date (the day after the Activity Date in the T+1 environment), OCC would then provide NSCC with the E&A/Delivery Transactions file, which also constitutes OCC's commitment to pay the Final GSP. By 8:00 AM NSCC would provide OCC with the Final GSP. By the later of 10:00 AM on the Settlement Date or one hour after a cease to act is declared, OCC must pay the Final GSP if there has been a mutual suspension of a Common Member. Finally, by 1:00 PM on the Settlement Date, OCC must provide reversals for the defaulted member's E&A/Delivery Transactions if OCC has not satisfied (or will not satisfy) the Final GSP.

For both Weekend Expirations and Weekday Expirations, Guaranty Substitution will take place only after the Common Members meet their start of day margin funding requirements at NSCC, if any. In a Common Member default event, the Guaranty Substitution will take place when OCC pays the Final GSP to NSCC.

The Clearing Agencies note that the Phase 2 changes described above are designed to change the process by which the GSP is implemented such that the use of the GSP as a mechanism to facilitate the acceptance of settlement obligations by NSCC can continue to operate within the condensed timing for clearance and settlement in a T+1 environment. However, the ultimate use of the GSP, its purpose, and its substantive import would remain consistent with the Phase 1 changes.

Phase 2 Changes to NSCC Rules

In connection with the proposed changes to the Accord, NSCC is also proposing changes to its Rules, described below.

First, NSCC would amend Section B of Procedure III of the NSCC Rules to make conforming changes to align with the Phase 2 Accord. NSCC proposes to remove references to Balance Order Securities and the Balance Order Accounting Operation in Procedure III to align with the removal of Balance Order transactions from the types of Eligible Securities under the Phase 2 Accord. NSCC would also update a reference to the Settlement Date for OCC E&A/Delivery Transactions to reflect that it would be one business day (rather than two business days) after exercise/assignment under the forthcoming T+1 settlement cycle. In addition, NSCC would add new language to Procedure III to clarify that E&A/Delivery Transactions that are indicated in a report or Consolidated Trade Summary shall have no force and effect with respect to the NSCC's guaranty or a Member's ultimate obligation to deliver or pay for the receipt of such securities unless and until such transactions have satisfied all requirements for the NSCC's guaranty under Addendum K and the new Accord (unless NSCC notifies Members to the contrary). NSCC would also clarify that E&A/Delivery Transactions indicated in a report or Consolidated Trade Summary for which the NSCC's guaranty does become effective shall be canceled and thereafter shall be null and void and such cancellation shall be reflected in the next available report or Consolidated Trade Summary. The proposed rule change is intended to reflect the timing of the receipt and processing of E&A/Delivery Transactions under the T+1 settlement cycle and the ultimate Guaranty Substitution and Guaranty Substitution Time under the Phase 2 Accord.

Implementation Timeframe

The proposed Phase 1 and Phase 2 changes will be implemented as follows:

- Phase 1: Within 120 days after the date OCC and NSCC receive all necessary regulatory approvals for these proposed changes to the Accord, NSCC will implement all Phase 1 changes. NSCC would announce the implementation date by an Important Notice posted to its public website at least seven days prior to implementation.
- Phase 2: On the compliance date with respect to the final T+1 amendments to Exchange Act Rule 15c6-1(a) established by the Commission, NSCC will implement all Phase 2 changes, keep in place any applicable Phase 1 changes that carry over to Phase 2, and decommission all Phase 1 changes that do not apply to Phase 2.⁷⁰

2. Statutory Basis

NSCC believes the proposed changes to the Existing Accord and the NSCC Rules are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes the proposed change is consistent with Section 17A(b)(3)(F) of the Act⁷¹ and Rules 17Ad-22(e)(7) and (20), each promulgated under the Act,⁷² for the reasons described below.

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and in general, protect investors and the public interest.⁷³ In addition, Rule 17Ad-22(e)(7) requires NSCC, in relevant part, to establish, implement, maintain and enforce written policies and procedures reasonably designed to

⁷⁰ If, due to the timing of regulatory approval, the implementation dates for Phase 1 and Phase 2 overlap, NSCC would implement only the Phase 2 changes and Phase 1 changes that carry over to Phase 2.

⁷¹ 15 U.S.C. 78q-1(b)(3)(F).

⁷² 17 CFR 240.17Ad-22(e)(7), (20).

⁷³ 15 U.S.C. 78q-1(b)(3)(F).

effectively measure, monitor and manage the liquidity risk that arises in or is borne by NSCC and to, among other things, address foreseeable liquidity shortfalls that would not be covered by NSCC's liquid resources.⁷⁴ Rule 17Ad-22(e)(20) further requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor and manage risks related to any link that NSCC establishes with one or more other clearing agencies, financial market utilities, or trading markets.⁷⁵

Proposed Phase 1 Changes

As described above, NSCC believes that providing OCC with the ability to make a Guaranty Substitution Payment to it with respect to any unmet obligations of a Mutually Suspended Member would promote prompt and accurate clearance and settlement because it would allow relevant securities settlement obligations to be accepted by NSCC for clearance and settlement, which would reduce the size of the related settlement obligations for both the Mutually Suspended Member and its assigned delivery counterparties through netting through NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation. Further, this proposal would reduce the circumstances in which OCC's Guaranty would continue to apply to these settlement obligations, to be settled on a broker-to-broker basis between OCC Clearing Members, which could result in substantial collateral and liquidity requirements for OCC Clearing Members and that, in turn, could also increase a risk of default by the affected OCC Clearing Members at a time when a Common Member has already been suspended. For these reasons, NSCC believes that the proposed changes would be beneficial to and protective of OCC, NSCC, their participants, and the markets that they serve. NSCC believes the proposed Phase 1 changes are therefore designed to promote the prompt and

⁷⁴ 17 CFR 240.17Ad-22(e)(7).

⁷⁵ 17 CFR 240.17Ad-22(e)(20).

accurate clearance and settlement of securities transactions and, in general, protect investors and the public interest.

NSCC also believes the proposal is consistent the requirements of Rule 17Ad-22(e)(7) because any increase to NSCC's liquidity needs that may be created by applying the NSCC Guaranty to Defaulted Member Transactions would occur with a simultaneous increase to its liquidity resources in the form of the Guaranty Substitution Payment. Therefore, NSCC believes it would continue to adhere to the requirements of Rule 17Ad-22(e)(7) under the proposal.

The Existing Accord between OCC and NSCC is a clearing agency link as contemplated by Rule 17Ad-22(e)(20). As described above, NSCC believes that implementation of the proposal would help manage the risks presented by the settlement link because, when the proposed provision is triggered by OCC, NSCC would receive the Guaranty Substitution Payment with respect to the relevant securities settlement obligations thereby ensuring that NSCC accepts those obligations for clearance and settlement and thereby reducing the size of the related settlement obligations for both the Mutually Suspended Member and its assigned delivery counterparties.

Proposed Phase 2 Changes

As described above, the Phase 2 changes to the Existing Accord would enable OCC to provide certain assurances that would permit NSCC to begin processing E&A/Delivery Transactions prior to Guaranty Substitution occurring – thereby promoting the continued effectiveness of the Guaranty Substitution process contemplated by the Existing Accord and the Phase 1 changes discussed above. By effecting these changes, the Phase 2 Accord would facilitate the continued ability of the GSP model to function in an environment with a shorter settlement cycle. For these reasons, NSCC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions and protect investors and the public interest. The

proposed changes would facilitate implementation of the new settlement cycle and support the Commission's stated goal of implementing necessary risk reducing changes in connection with the move to a T+1 settlement by the May 28, 2024, compliance date designated by the Commission. NSCC therefore believes that the proposed changes would be beneficial to and protective of NSCC, OCC, their participants, and the markets that they serve. As a result, NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.

NSCC believes the Phase 2 changes are also consistent the requirements of Rule 17Ad-22(e)(7) because any increase to NSCC's liquidity needs that may be created by applying the NSCC Guaranty to Defaulted Member Transactions would continue to occur with a simultaneous increase to NSCC's liquidity resources in the form of the Guaranty Substitution Payment. Therefore, NSCC believes it would continue to adhere to the requirements of Rule 17Ad-22(e)(7) under the proposal.

Finally, NSCC believe the proposed Phase 2 changes are consistent with the requirements of Rule 17Ad-22(e)(20). NSCC believes that the continued ability in the T+1 environment for OCC to make a Guaranty Substitution Payment to NSCC in the relevant circumstances involving a Mutually Suspended Member would help manage the risks presented to OCC, NSCC and their collective clearing members because the Guaranty Substitution Payment would ensure that the relevant securities settlement obligations would be accepted by NSCC, and therefore, the size of the related settlement obligations could be decreased from netting through NSCC's CNS Accounting Operation. Furthermore, the Phase 2 changes would require OCC to provide certain assurances to NSCC that would permit NSCC to begin processing E&A/Delivery Transactions prior to Guaranty Substitution occurring – particularly, OCC's acknowledgement of the Historical Peak GSP, demonstration of sufficient cash resources in its Clearing Fund to cover the Historical Peak GSP prior to submitting E&A/Delivery

Transactions to NSCC, and OCC's commitment to pay the Final GSP prior to NSCC processing such E&A/Delivery Transactions, further mitigating the risks presented by this link.

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

Section 17A(b)(3)(I) of the Act⁷⁶ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. NSCC does not believe that the proposal would impose any burden on competition. As described above, the proposed Phase 1 changes would amend the Existing Accord to permit OCC in certain circumstances to make a Guaranty Substitution Payment to NSCC so that the NSCC Guaranty would take effect for the Defaulted NSCC Member Transactions, and the OCC Guaranty would end. The proposed Phase 2 changes would further allow OCC to provide certain assurances to NSCC prior to the default of a Common Member that would enable NSCC to begin processing E&A/Delivery Transactions before the NSCC central counterparty trade guaranty attaches. The proposed changes would not inhibit access to NSCC's services in any way, apply to all Members and do not disadvantage or favor any particular user in relationship to another user. Accordingly, NSCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

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

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed 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,

⁷⁶ 15 U.S.C. 78q-1(b)(3)(I).

the Commission does not edit personal identifying information from comment 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 to not respond to any comments received.

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

Within 45 days of the date of publication of the 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NSCC-2023-007 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-2023-007. 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-2023-007 and should

be submitted on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁷

Sherry R. Haywood,

Assistant Secretary.

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⁷⁷ 17 CFR 200.30-3(a)(12).