

rule change may become operative upon filing. The Exchange states that this proposed rule change could immediately benefit market participants by avoiding confusion, as the BX Options 4 rules are incorporated to ISE's Options 4 rules. The Exchange also states that these rules permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program. For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.²⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BX-2022-024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-BX-2022-024. 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

²⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

only one method. The Commission will post all comments to the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2022-024 and should be submitted on or before December 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96426; File No. SR-NSCC-2022-005]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Partial Amendment No. 2 and Amendment No. 3 and of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Revise the Excess Capital Premium Charge Order

December 1, 2022.

On May 20, 2022, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2022-005

pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the **Federal Register** on June 8, 2022,³ and the Commission has received comments regarding the changes proposed in the proposed rule change.⁴

On July 11, 2022, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁶ On September 1, 2022, the Commission instituted proceedings, pursuant to Section 19(b)(2)(B) of the Act,⁷ to determine whether to approve or disapprove the Proposed Rule Change.⁸

On July 6, 2022, NSCC filed a partial amendment ("Amendment No. 2") to modify the proposed rule change.⁹ On November 28, 2022, NSCC filed another amendment ("Amendment No. 3") to modify the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by the clearing agency.¹⁰

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 95026 (June 2, 2022), 87 FR 34913 (June 8, 2022) (File No. SR-NSCC-2022-005). The Notice referred to an incorrect filing date of May 30, 2022; however, the proposal was filed on May 20, 2022, as indicated here. Moreover, the Notice reflected the filing of Amendment No. 1, which made a correction to Exhibit 5 of the filing, specifically, to insert an additional cross-reference into a proposed definition that had been omitted.

⁴ Comments are available at <https://www.sec.gov/comments/sr-nsc-2022-005/srnscc2022005.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ Securities Exchange Act Release No. 95245 (July 11, 2022), 87 FR 42523 (July 15, 2022) (SR-NSCC-2022-005).

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ Securities Exchange Act Release No. 95656 (Sept. 1, 2022), 87 FR 55058 (Sept. 8, 2022) (File No. SR-NSCC-2022-005).

⁹ Amendment No. 2 partially amended the proposed rule change to update the description of the impact of the proposal. The contents of that Amendment are reflected in Section II(A)(1)(vii) below. In Amendment No. 2, NSCC also provided a revised version of the confidential impact study that it included as Exhibit 3a to the proposed rule change.

¹⁰ Amendment No. 3 amends and replaces the proposed rule change in its entirety. Specifically, it would clarify the particular circumstances in which NSCC would retain the ability to waive the ECP charge, rather than remove NSCC's discretion to waive or reduce the charge as was initially proposed in the proposed rule change. As described in greater detail below in Section II.(iv), this Amendment describes why NSCC believes it is appropriate for NSCC to retain discretion to waive an ECP charge in certain defined circumstances, defines the circumstances in which NSCC may waive the ECP charge, and discloses both the information that NSCC would review in deciding whether to waive the ECP charge as well as the

²⁸ 17 CFR 200.30-3(a)(12).

The Commission is publishing this notice to solicit comments on Amendment Nos. 2 and 3 from interested persons and to designate a longer period for Commission action pursuant to Section 19(b)(2)(B) of the Act¹¹ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 2 and 3 (hereinafter, “proposed rule change”).

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

The proposed rule change consists of modifications to Procedure XV (Clearing Fund Formula and Other Matters) of NSCC’s Rules & Procedures (“Rules”) ¹² to revise the Excess Capital Premium (“ECP”) charge by enhancing the methodology for calculating the charge to (1) compare a Member’s applicable capital amounts with the amount it contributes to the Clearing Fund that represents its volatility charge, (2) for Members that are broker-dealers, use net capital amounts rather than excess net capital amounts in the calculation of the ECP charge; and for all other Members, use equity capital in the calculation of the ECP charge, and (3) establish a cap of 2.0 for the Excess Capital Ratio (as defined below) that is used in calculating a Member’s ECP charge.

The proposed changes would also improve the transparency of the Rules regarding the ECP charge by (1) clarifying the capital amounts that are used in the calculation of the charge by introducing new defined terms, (2) clarifying the particular circumstances in which NSCC retains the ability to waive the charge, and (3) providing that NSCC may calculate the charge based on updated capital information, as described in greater detail below.

II. Clearing Agency’s Amended 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 III below. The

governance around the application of such waiver. In order to implement these proposed changes, NSCC would amend Section I(B)(2) of Procedure XV of the Rules to include a new subsection (c) to describe NSCC’s discretion to waive the ECP charge.

¹¹ 15 U.S.C. 78s(b)(2)(B).

¹² Capitalized terms not defined herein are defined in the Rules, available at <http://dtcc.com/~media/Files/Downloads/legal/rules/nscclrules.pdf>.

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

Description of Amendment No. 3

This filing constitutes Amendment No. 3 to proposed rule change SR–NSCC–2022–005, which was filed with the Commission on May 20, 2022, and previously amended on June 1, 2022 and July 6, 2022. This Amendment amends and replaces the Filing, as previously amended, in its entirety. NSCC submits this Amendment in order to clarify the particular circumstances in which NSCC would retain the ability to waive the ECP charge, rather than remove NSCC’s discretion to waive or reduce the charge as was proposed in the Filing.

In particular, and as described in greater detail below, this Amendment describes why NSCC believes it is appropriate for NSCC to retain discretion to waive an ECP charge in certain defined circumstances, defines the circumstances in which NSCC may waive the ECP charge, and discloses both the information that NSCC would review in deciding whether to waive the ECP charge as well as the governance around the application of such waiver. In order to implement these proposed changes, NSCC would amend Section I(B)(2) of Procedure XV of the Rules to include a new subsection (c) to describe NSCC’s discretion to waive the ECP charge, as shown in Exhibits 4 and 5 to this Amendment.

Proposed Rule Change

NSCC is proposing to modify the ECP charge, which is a component of its Clearing Fund that NSCC may impose on a Member when a portion of that Member’s Required Fund Deposit (defined in the Rules as the “Calculated Amount”) exceeds its applicable capital amounts by 1.0 (defined in the Rules as the “Excess Capital Ratio”), as described in greater detail below.¹³ The proposed changes would revise the ECP charge by enhancing the methodology for calculating the charge to (1) compare a Member’s applicable capital amounts with the amount it contributes to the Clearing Fund that represents its volatility charge, (2) for Members that are broker-dealers, use net capital amounts rather than excess net capital amounts in the calculation of the ECP

charge; and for all other Members, use equity capital in the calculation of the ECP charge, and (3) establish a cap of 2.0 for the Excess Capital Ratio that is used in calculating a Member’s ECP charge.

The proposed changes would also improve the transparency of the Rules regarding the ECP charge by (1) clarifying the capital amounts that are used in the calculation of the charge by introducing new defined terms, (2) clarifying the particular circumstances in which NSCC retains the ability to waive the charge, and (3) providing that NSCC may calculate the charge based on updated capital information, as described in greater detail below.

(i) Overview of the Required Fund Deposit and NSCC’s Clearing Fund

As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Fund Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.¹⁴ The Required Fund Deposit serves as each Member’s margin.

The objective of a Member’s Required Fund Deposit is to mitigate potential losses to NSCC associated with liquidating a Member’s portfolio in the event NSCC ceases to act for that Member (hereinafter referred to as a “default”).¹⁵ The aggregate of all Members’ Required Fund Deposits constitutes the Clearing Fund of NSCC. NSCC would access its Clearing Fund should a defaulting Member’s own Required Fund Deposit be insufficient to satisfy losses to NSCC caused by the liquidation of that Member’s portfolio. Pursuant to the Rules, each Member’s Required Fund Deposit consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV of the Rules.¹⁶

While many components of the Clearing Fund are designed to measure risks presented by the net unsettled positions a Member submits to NSCC to be cleared and settled, some components measure and mitigate other risks that NSCC may face, such as credit

¹⁴ See Rule 4 and Procedure XV, *supra* note 12. NSCC’s market risk management strategy is designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as “credit risks.” 17 CFR 240.17Ad–22(e)(4).

¹⁵ The Rules identify when NSCC may cease to act for a Member and the types of actions NSCC may take. For example, NSCC may suspend a firm’s membership with NSCC or prohibit or limit a Member’s access to NSCC’s services in the event that Member defaults on a financial or other obligation to NSCC. See Rule 46, *supra* note 12.

¹⁶ *Supra* note 12.

¹³ See Section I(B)(2) of Procedure XV, *id.*

risks. For example, a Member may be required to make an additional deposit to the Clearing Fund pursuant to Section I(B)(1) of Procedure XV of the Rules if it is placed on the Watch List, which is defined in Rule 1 (Definitions and Descriptions) of the Rules as a list of Members who NSCC deems to pose heightened risk to it and its other Members based on consideration of relevant factors.¹⁷

Similarly, the ECP charge is a component of the Clearing Fund that is designed to mitigate the heightened default risk a Member could pose to NSCC if it operates with lower capital levels relative to its margin requirements. Each Business Day, NSCC determines if a Member may be subject to the ECP charge by first determining its Calculated Amount. The Calculated Amount is a portion of a Member's Required Fund Deposit designed to represent its margin requirements to NSCC. A Member's Calculated Amount is calculated as its Required Fund Deposit excluding any applicable special charge, margin requirement differential charge, coverage component charge or margin liquidity adjustment charge,¹⁸ plus any additional amounts the Member is required to deposit to the Clearing Fund either due to being placed on the Watch List¹⁹ or pursuant to Rule 15 (Assurances of Financial Responsibility and Operational Capability) of the Rules.²⁰

NSCC then divides the Member's Calculated Amount by its current capital amount, which is the amount reported to NSCC pursuant to its ongoing membership standards, as set out in Rule 2B (Ongoing Membership Requirements and Monitoring) and Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History) of the Rules.²¹ Pursuant to the current membership standards in Addendum B of the Rules, Members

¹⁷ See Section 4 of Rule 2B, which describes NSCC's ongoing monitoring and review of Members and the factors NSCC considers in assigning Members a credit rating that could result in a Member being placed on the Watch List, *supra* note 12.

¹⁸ The special charge is described in Section I(A)(1)(c) and (2)(c) of Procedure XV, the MRD charge is described in Section I(A)(1)(e) and (2)(d) of Procedure XV, the coverage component charge is described in Section I(A)(1)(f) and (2)(e) of Procedure XV, and the MLA charge is described in Section I(A)(1)(g) and (2)(f) of Procedure XV, *supra* note 12.

¹⁹ *Supra* note 17.

²⁰ Pursuant to Section 2(b)(iv) of Rule 15, NSCC may require a Member to provide NSCC with adequate assurances of that Member's financial responsibility in the form of increased Clearing Fund deposits. *Supra* note 12.

²¹ *Supra* note 12.

that are broker-dealers are required to maintain a certain level of excess net capital, and Members that are banks are required to maintain a certain level of equity capital as a requirement for continued membership with NSCC.²² Pursuant to Section 2 of Rule 2B of the Rules, Members are required to provide NSCC with financial information, including information regarding Members' current capital amounts, on a regular basis and NSCC uses these reported capital amounts in the calculation of the ECP charge.²³

Pursuant to Section I(B)(2) of Procedure XV, if a Member's Calculated Amount, when divided by its applicable capital amount, is greater than the Excess Capital Ratio of 1.0, NSCC may require that Member to deposit an ECP charge.²⁴ The applicable ECP charge may be equal to the product of (1) the amount by which a Member's Calculated Amount exceeds its applicable capital amount, multiplied by (2) the Member's Excess Capital Ratio. Members are able to access and view reports regarding their Clearing Fund and, through these reports, Members may be alerted when their Calculated Amount divided by the applicable capital amount is greater than 0.5, as an early warning regarding their capital levels.

Under Section I(B)(2) of Procedure XV, NSCC may collect a lower ECP charge than the amount calculated pursuant to the Rules, may determine not to collect the ECP charge from a Member at all, and may return all or a portion of a collected ECP charge if it believes the imposition or maintenance of the ECP charge is not necessary or appropriate.²⁵ Section I(B)(2) of Procedure XV describes some circumstances when NSCC may determine not to collect an ECP charge from a Member, which includes, for example, when an ECP charge results from trading activity for which the Member submits later offsetting activity that lowers its Required Fund Deposit.²⁶ The discretion to adjust, waive or return an ECP charge was designed to provide

²² See Section 1. B.1. of Addendum B, *supra* note 12. NSCC has proposed changes to the membership standards set forth in Addendum B that would modify the capital requirements for Members. See Securities Exchange Act Release No. 94068 (January 26, 2022), 21 FR 5544 (February 1, 2022) (SR-NSCC-2021-016).

²³ See Section 2(A) of Rule 2B, *supra* note 12.

²⁴ *Supra* note 12.

²⁵ When NSCC determines to collect a lower amount than that amount calculated pursuant to the Rules, as provided for under Procedure XV, NSCC may, for example, calculate that lower amount by reducing the Excess Capital Ratio used in the calculation to 2.0. *Supra* note 12.

²⁶ See footnote 7 of Procedure XV, *supra* note 12.

NSCC with the ability to determine when a calculated ECP charge may not be necessary or appropriate to mitigate the risks it was designed to address.²⁷

Since the ECP charge was adopted, NSCC has calculated and assessed the ECP charge consistent with the Rules, and NSCC has exercised its discretion to both reduce and waive the ECP charge when NSCC has deemed it necessary or appropriate. NSCC recently reviewed the effectiveness of the ECP charge to identify ways NSCC could enhance both the calculation of the charge and the disclosures regarding the charge in the Rules. In connection with this review, NSCC discussed the ECP charge and its proposed enhancements with Members, NSCC management, and NSCC's supervisors at the Commission. As a result of this review, NSCC is proposing to make several enhancements to the ECP charge, as described in greater detail below.

These enhancements are designed to improve NSCC's ability to measure the increased default risks that are presented by Members who operate with lower capital. The proposed changes would simplify the calculation of the charge and the description of the charge in the Rules, making it more predictable to Members. The proposed changes are designed to improve the transparency of the ECP charge to Members by clarifying the particular circumstances in which NSCC retains the ability to waive the charge and providing that NSCC may calculate the charge based on updated capital information. The proposed improvements to the transparency of the ECP charge also include clarifying the descriptions of the capital amounts that would be used in the calculation of the charge through new defined terms. Collectively, the proposal would make the ECP charge more consistent, transparent, and predictable to Members, while maintaining the effectiveness of NSCC's risk-based margining methodology as it relates to the ECP charge.

(ii) Use Members' Volatility Component as the Calculated Amount

NSCC is proposing to replace the Calculated Amount with the amount collected as that Member's volatility component as determined pursuant to Sections I(A)(1)(a)(i)-(iii) and (2)(a)(i)-(iii) of Procedure XV of the Rules.²⁸

²⁷ See Securities Exchange Act Release No. 54457 (September 15, 2006), 71 FR 55239 (September 21, 2006) (SR-FICC-2006-03 and SR-NSCC-2006-03).

²⁸ The volatility component is designed to capture the market price risk associated with each Member's portfolio at a 99th percentile level of

In both determining if an ECP charge is applicable and in calculating an ECP charge, NSCC currently compares a Member's Calculated Amount to its reported capital levels. As described above, the Calculated Amount is defined in Section I(B)(2) of Procedure XV as a Member's Required Fund Deposit, excluding certain components and including other additional deposits to the Clearing Fund.²⁹ Because a goal of the ECP charge is to identify and mitigate risks presented when a Member's capital levels may not be adequate to meet its margin requirements to NSCC, the Calculated Amount is designed to represent a material portion of those margin requirements.

As described above, because each component of the Clearing Fund is calculated to address specific risks faced by NSCC, some components are applied only to certain positions in a Member's portfolio. For example, the CNS fails charge, which is included in the Calculated Amount, is based on the market value of only a Member's CNS Fails Positions (as defined in the Rules) of the Member.³⁰ The volatility component of the Clearing Fund measures the market price volatility of all of a Member's Net Unsettled Positions and Net Balance Order Unsettled Positions (as defined in the Rules). Therefore, the volatility component is often considered a comprehensive measurement of the risks presented by a Member's clearing activity and usually comprises the largest portion of a Member's Required Fund Deposit.³¹ NSCC believes that replacing the Calculated Amount with a Member's volatility charge would provide an appropriate measure for purposes of the ECP charge.

Currently, determining a Member's Calculated Amount requires a more

confidence. NSCC has two methodologies for calculating the volatility component—a model-based volatility-at-risk, or VaR, charge and a haircut-based calculation, for certain positions that are excluded from the VaR charge calculation. The charge that is applied to a Member's Required Fund Deposit with respect to the volatility component is referred to as the volatility charge and is the sum of the applicable VaR charge and the haircut-based calculation. Amounts calculated pursuant to Sections I(A)(1)(a)(iv) and (2)(a)(iv) of Procedure XV with respect to long positions in Net Unsettled Positions in Family-Issued Securities are designed to address wrong-way risk presented by these positions, not volatility risks, and, as such, are not a part of a Member's volatility charge. See Sections I(A)(1)(a) and (2)(a) of Procedure XV, *supra* note 12.

²⁹ See *supra* note 18.

³⁰ See definition of "CNS Fails Position" in Rule 1, and see also Section I(A)(1)(e) of Procedure XV, *supra* note 12.

³¹ See definitions of "Net Unsettled Position" and "Net Unsettled Balance Order Position" in Rule 1, *supra* note 12.

complicated calculation, as it uses a Member's Required Fund Deposit, excludes certain components, and includes other deposits. The proposal would simplify this calculation significantly by using only the volatility component. One of the tools NSCC provides to its Members is a calculator that allows them to determine their potential volatility charge based on trading activity. Therefore, this proposed change would make the calculation of the ECP charge both clearer and more predictable for Members.

NSCC does not expect that any impact of this proposed change on the number of ECP charges or the size of the calculated ECP charges would materially impact NSCC's ability to manage the risks the ECP charge is designed to address. NSCC believes the benefits of using a simpler, clearer, and more predictable calculation that is based on the most comprehensive component of the Clearing Fund outweigh any risk related to the reduction in the ECP charges NSCC would collect.

(iii) Use Net Capital for Broker-Dealer Members and Equity Capital for All Other Members in the Calculation of the ECP Charge

In the calculation of the ECP charge, NSCC is proposing to use net capital rather than excess net capital for Members that are broker-dealers, and equity capital for all other Members. As described in greater detail below, in connection with these proposed changes, NSCC would also improve the transparency of the Rules by adopting definitions of "Net Capital" and "Equity Capital."

As described above, NSCC's ongoing membership requirements, set forth in Rule 2B of the Rules, require Members to provide NSCC with regular information regarding their financial positions, including capital levels.³² This information is provided, in part, to confirm that Members continue to maintain the minimum financial requirements of membership set forth in Addendum B of the Rules.³³ Currently, NSCC also uses these reported capital amounts in the calculation of the ECP charge.

First, NSCC believes it would be appropriate to revise the capital measure used to calculate the ECP

³² See Section 2.A of Rule 2B, which requires Members to provide NSCC with a copy of their Form X-17-A-5 (Financial and Operational Combined Uniform Single ("FOCUS") Report), Consolidated Report of Condition and Income ("Call Report"), or an equivalent, *supra* note 12.

³³ *Supra* note 12.

charge for broker-dealer Members to replace excess net capital with net capital. This revision would align the capital measures used for broker-dealer Members and other Members, which would result in more consistent calculations of the ECP charge across different types of Members.

In addition to creating consistency in the calculations for different Members, NSCC believes that using net capital rather than excess net capital would also provide NSCC with a better measure of the increased default risks presented when a Member operates at low net capital levels relative to its margin requirements. This approach would be consistent with the rationale for the Commission's amendments to Rule 15c3-1 under the Act (the "Net Capital Rule"), which were designed to promote a broker-dealer's capital quality and require the maintenance of "net capital" (*i.e.*, capital in excess of liabilities) in specified amounts as determined by the type of business conducted.³⁴ The Net Capital Rule was designed to ensure the availability of funds and assets (including securities) in the event that a broker-dealer's liquidation becomes necessary. The Net Capital Rule represented a net worth perspective, which is adjusted by unrealized profit or loss, deferred tax provisions, and certain liabilities as detailed in the rule. It also included deductions and offsets and required that a broker-dealer demonstrate compliance with the Net Capital Rule, including maintaining sufficient net capital at all times (including intraday).

Similarly, NSCC believes that the Net Capital Rule is an effective process of separating liquid and illiquid assets and computing a broker-dealer's regulatory net capital that should replace NSCC's existing practice of using excess net capital in the calculation of the ECP charge.

Second, NSCC is proposing to revise the Rules to provide that, for all Members that are not broker-dealers, it would use equity capital in calculating the ECP charge. Currently, the Rules state that NSCC would use a Member's capital amount set forth in the membership standards in Addendum B of the Rules.³⁵ Section 1.B of Addendum B describes the membership standards of Members, and currently states that the applicable capital measure for Members that are banks is equity capital, for Members that are trust companies and not banks the

³⁴ 17 CFR 240.15c3-1. See Securities Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51823 (August 21, 2013) (File No. S7-08-07).

³⁵ *Supra* note 12.

applicable capital measure is consolidated capital, and for other legal entities that are Members the applicable capital measure is determined by NSCC. Currently, and historically, NSCC has had very few Members that are trusts and not banks. For all Members that are not banks, non-bank trusts or broker-dealers (which generally include, for example, exchanges and registered clearing agencies), NSCC uses those Members' reported equity capital in the calculation of the ECP charge. Therefore, in practice, the ECP charge is calculated for the majority of Members that are not broker-dealers using their equity capital, and this proposed change is not expected to have a material impact on the collection of ECP charges. The proposal would simplify the calculation of the ECP charge for Members that are not broker-dealers by stating in Section I(B)(2) of Procedure XV that NSCC would use equity capital rather than use different measures that are based on other membership requirements. This proposed change would also create consistency in the calculations across Members.

(iv) Establish a Cap for the Excess Capital Ratio

NSCC is proposing to set a maximum amount of Excess Capital Ratio that is used in calculating Members' ECP charge to 2.0. NSCC believes capping the multiplier that is used in this calculation would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge. Historically, the Excess Capital Ratio has rarely exceeded 2.0 in the calculation of Members' ECP charges, and in cases when 2.0 was exceeded NSCC typically exercised the discretion provided to it in the Rules to reduce the applicable charge. NSCC's discretion was appropriate in these circumstances because NSCC believes it is able to mitigate the risks presented to it by a Member's lower capital levels by collecting an ECP charge calculated with an Excess Capital Ratio that is at or below 2.0.

Therefore, and consistent with NSCC's proposal to clarify its discretion to waive the ECP charge, as described below, NSCC believes capping the Excess Capital Ratio at 2.0 would continue to provide NSCC with an appropriate measure of the risks presented to it relative to Members' capital levels. This proposed change would also provide Members with more clarity and transparency into the ECP charge, by allowing them to predict and estimate the maximum amount of their potential ECP charge.

(v) Improve Transparency Regarding the ECP Charge

NSCC is proposing changes to Section I(B)(2) of Procedure XV to improve transparency regarding the ECP charge by (a) clarifying the description of the capital amounts that NSCC uses in the calculation of the ECP charge by adopting new defined terms, (b) clarifying the particular circumstances in which NSCC retains the ability to waive the charge, and (c) providing that NSCC may calculate the charge based on updated capital information.

First, NSCC is proposing to clarify the description of the capital amounts that it uses to calculate the ECP charge by introducing defined terms and specifying the reporting requirements that NSCC relies on to obtain that capital information for Members. As described above, for Members that are broker-dealers, NSCC is proposing to use a Member's net capital amount, and for all other Members, NSCC would use a Member's equity capital in the calculation of the ECP charge. In order to improve the clarity of the Rules, NSCC is proposing to introduce a defined term for "Equity Capital" in Rule 1 and to revise a proposed defined term for "Net Capital" in order to align the two defined terms. The proposal would also revise Section I(B)(2) of Procedure XV in describing the calculation of the ECP charge to use these defined terms where appropriate. Finally, the proposal would amend Addendum B to include the new defined term for Equity Capital.

The definition of Equity Capital would be, as of a particular date, the amount equal to the equity capital as reported on the Member's or Limited Member's most recent Call Report, or, if the Member or Limited Member is not required to file a Call Report, then as reported on its most recent financial statements or equivalent reporting. NSCC would also align a proposed definition of Net Capital to be, as of a particular date, the amount equal to the net capital as reported on the Member's or Limited Member's most recent FOCUS Report, or, if the Member or Limited Member is not required to file a FOCUS Report, then as reported on its most recent financial statements or equivalent reporting.

In addition to using these new defined terms, NSCC would also add a statement to Section I(B)(2) of Procedure XV to clarify to Members that the amounts used in the calculation of the ECP charge would be the amounts included in their regular reporting that is provided to NSCC pursuant to the ongoing membership reporting

requirements, specifically in their FOCUS Report or Call Report, as applicable, or in an equivalent financial statement or report that is delivered to NSCC pursuant to the same requirement. Collectively, these proposed changes would provide Members with improved clarity and certainty regarding the amounts that would be used in calculating the ECP charge.

Second, the proposed changes would clarify the particular circumstances in which NSCC retains the ability to waive the ECP charge. NSCC believes that the proposed changes to the calculation of the ECP charge described in this filing would have the collective impact of eliminating most circumstances in which NSCC would have exercised this discretion. For example, the proposal to cap the Excess Capital Ratio at 2.0 and the proposal to specify that NSCC may calculate an ECP charge based on updated capital amounts, both address the most common circumstances when NSCC has either waived or reduced the ECP charge in the past. However, NSCC believes that there may still be circumstances when it may not be necessary or appropriate to collect an ECP charge from a Member, for example, in certain exigent circumstances when NSCC observes unexpected changes in market volatility or trading volumes. Therefore, NSCC is proposing to retain discretion to waive an ECP charge in certain defined circumstances and to disclose the governance around the application of such discretion. The proposed changes would revise Section I(B)(2) of Procedure XV by adding a new subsection (c) to provide Members with transparency regarding this retained discretion.

The proposed subsection (c) would describe the exigent circumstances in which NSCC would retain the ability to waive an ECP charge. Such exigent circumstances would constitute circumstances when NSCC, in its sole discretion, observes extreme market conditions or other unexpected changes in factors such as market volatility, trading volumes or other similar factors. As noted above, NSCC believes, based on a review of past data, that the proposed changes to the calculation of the ECP charge would otherwise eliminate most prior instances when an ECP charge was waived. However, in further reviewing such data, NSCC also observed that there have been instances, particularly in recent years, when NSCC has waived the ECP charge in moments covered by the concept of exigent circumstances, and that the ECP charge would have been triggered in such

circumstances even under the proposed calculation of the charge. Such moments occurred multiple times in recent years, including, for example, during the extreme market volatility experienced in early 2020 related to the global outbreak of the COVID-19 coronavirus and the meme stock market event in early 2021.

Based upon this further review of the data, NSCC believes there remains some ongoing possibility that an unexpected increase in market volatility, for example, could cause a relative increase in a Member's volatility charge, which may, in turn, trigger an ECP charge, even under the proposed new ECP charge calculation. In such circumstances, under the proposal, NSCC would determine if the ECP charge being triggered at that time is not primarily caused by the risk presented by a Member's capital levels and whether NSCC can effectively address the risk exposure presented by that Member without the collection of the ECP charge from that Member. Alternatively, NSCC may determine, based on its review of the information available to it, that the ECP charge was appropriately triggered by a Member's capital position or trading activity and was not driven primarily by the prevailing market conditions or other exigent circumstances. Therefore, NSCC believes it is appropriate to retain a certain amount of discretion to review an ECP charge that is triggered in such circumstances to determine whether a waiver of the ECP charge may be appropriate.

In addition to defining the circumstances in which NSCC may waive the ECP charge, the proposed changes would also describe the review NSCC would conduct in deciding to waive the charge in the exigent circumstances, the information NSCC would consider in such review, and the governance around a determination by NSCC to waive the ECP charge. More specifically, the proposed rule change provides that NSCC would review all relevant facts and other information available to it at the time of its decision, including the degree to which a Member's capital position and trading activity compare or correlate to the prevailing exigent circumstances and whether NSCC can effectively address the risk exposure presented by a Member without the collection of the ECP charge from that Member. For example, as noted above, if NSCC believes, based on its review of the relevant circumstances, that the risk exposure presented by a Member is driven by the unexpected increase in market volatility and not by a Member's capital levels, NSCC may determine that

it is appropriate to address such risk through the collection of a special charge from that Member rather than an ECP charge.³⁶ By describing NSCC's review in Procedure XV, the proposed changes would alert Members that, while exigent circumstances may permit NSCC to consider whether to waive an ECP charge, NSCC would still consider information available to it at that time in determining whether a waiver is appropriate, including NSCC's ability to effectively manage the heightened default risks presented by Members that operate at lower capital levels.

Finally, the proposed rule change would provide transparency into the governance around a decision to waive an ECP charge by identifying the NSCC officer who would be authorized to apply a waiver and requiring that the decision be documented.³⁷

By clarifying the particular circumstances in which NSCC retains the ability to waive the ECP charge, the proposal would provide Members with more certainty and transparency in predicting when an ECP charge may be waived and how NSCC would make a determination to apply such a waiver.

Third, NSCC would provide that it may calculate the ECP charge based on updated capital information. As described above, NSCC would use the net capital or equity capital amounts that are reported on Members' most recent financial reporting or financial statements delivered to NSCC in connection with the ongoing membership reporting requirements. Under the proposal, if a Member's capital amounts change between the dates when it submits these financial reports, it may provide NSCC with updated capital information for purposes of calculating the ECP charge. Today, when NSCC exercises its discretion to waive or reduce the amount of an applicable ECP charge, NSCC occasionally does so by applying updated capital information in its calculation. Therefore, in connection with clarifying this discretion, NSCC would disclose in the Rules that it may use updated capital information in the calculation of an ECP charge rather than require Members to wait until the issuances of their next financial reporting or financial statements for

³⁶ See Section I(A)(1)(c) and (2)(c) of Procedure XV of the Rules, under which NSCC may collect, as part of Members' Required Fund Deposit to the Clearing fund, "[a]n additional payment ('special charge') from Members in view of price fluctuations in or volatility or lack of liquidity of any security." *Supra* note 12.

³⁷ NSCC would also update its internal procedures to include waivers of the ECP charge in NSCC's regular updates to the Commission.

changes in their capital positions to be reflected in an ECP charge calculation.

NSCC is proposing to retain some discretion in when it would accept updated capital information for this purpose. For example, NSCC may require a Member to provide documentation of the circumstances that caused a change in capital information, and if adequate evidence is not available or NSCC does not believe the evidence sufficiently verifies that the Member's capital position has changed, NSCC would continue to calculate the ECP charge for that Member based on the prior capital information available to NSCC until the next financial reporting or financial statements are delivered. NSCC believes it is appropriate to retain some discretion to allow NSCC to determine if updated capital information is adequately verified before it agrees to rely on that information for this calculation. NSCC believes the proposal to disclose that Members would have the opportunity to provide updated capital information to NSCC to be used in an ECP charge calculation would improve the transparency of the Rules despite NSCC's proposal to retain a certain level of discretion.

(vi) Proposed Changes to Procedure XV of the Rules

The proposal would amend Section I(B)(2) of Procedure XV of the Rules to implement the proposed changes to the ECP charge. The proposed changes would organize this section into three subsections.

The proposed subsections (a) and (b) would describe the calculation used to determine if an ECP charge may be applicable to a Member and, if an ECP charge is applicable, how that charge would be calculated. The revised description of these calculations would (i) replace the definition of Calculated Amount with Members' volatility charge, (ii) replace references to the capital amounts used in the calculation with the new defined terms for Net Capital and Equity Capital, and (iii) state that the Excess Capital Ratio used in calculating an ECP charge is set at a maximum of 2.0. The proposed change would also include a statement that the applicable capital amounts used in the calculation would be the amounts most recently reported to NSCC on Members' FOCUS Reports or Call Reports, as applicable, or other equivalent financial reporting submitted to NSCC pursuant to Section 2 of Rule 2B. The proposal would also state that NSCC may, in its sole discretion, accept updated capital amounts in calculating an ECP charge.

The proposed subsection (c) would describe NSCC's discretion to waive the ECP charge in certain defined circumstances, the information NSCC would consider in deciding to apply this discretion and the governance around this decision.

(vii) Impact Study Results

NSCC has provided the Commission with the results of an impact study that reviewed the potential impacts of the proposal during the period of June 1, 2020 through December 31, 2021. The study showed that the proposed enhancement would have reduced the number of ECP charges that would have been triggered by the calculation by 65 percent, from 347 ECP charges triggered for 19 Members to 122 ECP charges triggered for 14 Members. The total aggregate amount that would have been triggered by the proposed calculation if the proposal was effective during that time would have been reduced from \$51.31 billion (the actual total amount of ECP charges triggered by the current calculation during that period) to approximately \$17.44 billion (the total amount of ECP charges that would have been triggered during that time by the proposed calculation). The average amount that would have been calculated for each Member would have been reduced from \$147.9 million to approximately \$143.0 million. The study showed that the proposal would have had no impact to NSCC's overall, or Member-level, end-of-day Clearing Fund Requirement backtesting coverage.

Over the impact study period, NSCC waived and adjusted calculated ECP charges by \$38.80 billion. NSCC waived a total of 33 ECP charges that totaled approximately \$26.12 billion. If the proposal had been in place at that time, 14 of these charges would have been collected from Members (although the amount would have been reduced), totaling \$6.46 billion, 14 charges would not have been triggered as the calculated ECP ratio was below 1.0, and NSCC would have waived 5 of the ECP charges, mainly following receipt of updated financial information. NSCC adjusted the amount of 16 ECP charges by a total of approximately \$12.69 billion. If the proposal had been in place at that time, 7 of these charges would have been still collected, totaling \$6.48 billion, and 9 charges would not have been triggered as the calculated ECP ratio was below 1.0.

(viii) Implementation Timeframe

NSCC would implement the proposed changes no later than 30 days after the approval of the proposed rule change by the Commission. NSCC would

announce the effective date of the proposed changes by Important Notice posted to its website.

2. Statutory Basis

NSCC believes the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,³⁸ and Rules 17Ad-22(e)(4)(i), (e)(6)(i) and (e)(23)(ii), each promulgated under the Act,³⁹ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of NSCC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.⁴⁰

NSCC believes the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act because such changes enhance the effectiveness of the ECP charge by (1) replacing the Calculated Amount with a Member's volatility component, (2) replacing excess net capital with net capital for broker-dealer Members and using equity capital for all other Members, and (3) establishing a cap for the Excess Capital Ratio. As described above, NSCC believes these proposed changes would create a simpler, clearer calculation of the ECP charge that is based on more consistent metrics, while allowing NSCC to continue to effectively address the heightened default risks presented by Members that operate at lower capital levels.

The Clearing Fund is a key tool that NSCC uses to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event of Member default. Each of the proposed enhancements described above are designed to collectively improve NSCC's ability to collect amounts that reflect the risks posed by its Members. The proposal to enhance the calculation of the ECP charge by replacing the Calculated Amounts with Members' volatility charges would make the calculation clearer and more predictable to Members. The proposal to use net capital for broker-dealer Members and equity capital for all other Members in the calculation of the ECP charge would

result in a more consistent calculation across different types of Members. The proposal to cap the Excess Capital Ratio at 2.0 would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge and would reduce the circumstances in which NSCC may waive the charge, resulting in a more transparent margining methodology.

Together, by improving the consistency and predictability of the ECP charge, the proposed enhancements would also improve NSCC's ability to collect amounts that reflect the risks posed by its Members such that, in the event of Member default, NSCC's operations would not be disrupted, and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the proposed rule change is designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.⁴¹

The proposed changes are also designed to improve the transparency of the Rules regarding the ECP charge, for example, by introducing new defined terms regarding the capital amounts used in the charge and by clarifying the exigent circumstances in which NSCC may waive the charge. By enhancing the clarity and transparency of the Rules, the proposed changes would allow Members to better anticipate their margin charges, which would allow them to more efficiently and effectively conduct their business in accordance with the Rules. In this way, NSCC believes the proposed changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.⁴²

Rule 17Ad-22(e)(4)(i) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.⁴³

As described above, NSCC believes the proposed rule change would enable NSCC to better identify, measure, monitor, and, through the collection of Members' Required Fund Deposits,

³⁸ 15 U.S.C. 78q-1(b)(3)(F).

³⁹ 17 CFR 240.17Ad-22(e)(4)(i), (e)(6)(i) and (e)(23)(ii).

⁴⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁴¹ *Id.*

⁴² *Id.*

⁴³ 17 CFR 240.17Ad-22(e)(4)(i).

manage its credit exposures to Members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence. Specifically, NSCC believes that the proposed enhancements to the calculation of the ECP charge to use the volatility charge rather than the Calculated Amount, and to use net capital and equity capital, as appropriate, would collectively make the calculation clearer and more predictable to Members. The proposal to use net capital rather than excess net capital for broker-dealer Members, and equity capital for all other Members, would also result in a more consistent calculation across different types of Members. Additionally, the proposal to cap the Excess Capital Ratio at 2.0 would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge and would reduce the circumstances in which NSCC may waive the charge, resulting in a more transparent margining methodology. Finally, the proposed change to clarify NSCC's discretion to waive the ECP charge would enable NSCC to better identify, measure, monitor, and manage its credit exposures to Members by permitting NSCC to determine, in certain exigent circumstances, when it is necessary to collect an ECP charge and when it is appropriate to waive an ECP charge.

Overall, NSCC believes the proposal would improve the clarity and predictability of the ECP charge and, in this way, would enhance NSCC's ability to effectively identify, measure and monitor its credit exposures, and would enhance NSCC's ability to maintain sufficient financial resources to cover NSCC's credit exposure to each participant fully with a high degree of confidence. As such, NSCC believes the proposed rule change is consistent with Rule 17Ad-22(e)(4)(i) under the Act.⁴⁴

Rule 17Ad-22(e)(6)(i) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.⁴⁵

The Required Fund Deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit NSCC's exposures to Members.

NSCC's proposed changes to use the volatility charge rather than the Calculated Amount, and to use net capital and equity capital, as appropriate, in the calculation of the ECP charge would collectively make the calculation clearer and more predictable to Members, while continuing to apply an appropriate risk-based charge designed to mitigate the risks presented to NSCC. Similarly, the proposal to cap the Excess Capital Ratio at 2.0 would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge and would reduce the circumstances in which NSCC may waive the charge, resulting in a more transparent margining methodology. Finally, the proposed rule change would clarify the exigent circumstances when NSCC may determine that it is appropriate to waive the ECP charge. Overall, these proposed changes would improve the effectiveness of the calculation of the ECP charge and, therefore, allow NSCC to more effectively address the increased default risks presented by Members that operate with lower capital levels relative to their margin requirements. In this way, the proposed changes enhance the ability of the ECP charge to produce margin levels commensurate with the risks NSCC faces related to its Members' operating capital levels. Therefore, NSCC believes the proposed rule change is consistent with Rule 17Ad-22(e)(6)(i) under the Act.⁴⁶

Rule 17Ad-22(e)(23)(ii) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in NSCC.⁴⁷ NSCC is proposing to improve the clarity and transparency of the Rules related to its calculation of the ECP charge in a number of ways described in this filing. The proposed changes would clarify the description of the capital amounts that NSCC uses in the calculation of the ECP charge by adopting new defined terms, clarify NSCC's discretion to waive the charge, and provide that NSCC may calculate the charge based on updated capital information. Additionally, as described above, the proposed changes to use the volatility charge rather than the Calculated Amount, and to use net capital and equity capital, as appropriate, in the calculation of the

ECP charge, would collectively make the calculation clearer and more predictable to Members. Finally, the proposed rule change would provide clarity and transparency around the circumstances in which NSCC may waive the ECP charge, the information NSCC would consider in making this determination and the governance around such a decision. Through these proposed amendments to the Rules, the proposal would assist NSCC in providing its Members with sufficient information to identify and evaluate the risks and costs, in the form of Required Fund Deposits to the Clearing Fund, that they incur by participating in NSCC. In this way, NSCC believes the proposed changes are consistent with Rule 17Ad-22(e)(23)(ii) under the Act.⁴⁸

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

NSCC does not believe the proposed rule change to enhance the calculation of the ECP charge would impact competition because the proposed changes are designed to create a clearer and simpler calculation that is based on more consistent metrics and is likely to result in lower and less frequent ECP charges than are applied under the current methodology. More specifically, the replacement of the Calculated Amount with the volatility charge, which is currently a portion of the Calculated Amount, when used in the calculation to determine if an ECP charge is applicable, is likely to result in fewer triggered ECP charges, as evidenced by the impact study referenced above. Additionally, the replacement of excess net capital with net capital for broker-dealer Members, and using equity capital for all other Members, would create more consistent calculations of the ECP charge across types of Members, reducing any burden on competition that the existing calculation could have presented. Finally, the proposal to cap the Excess Capital Ratio to 2.0 in the calculation of the ECP charge would limit the total amount a Member could be charged, and would provide all Members with more certainty and transparency into their potential margin requirements.

Therefore, by creating a simpler and clearer calculation that uses more consistent metrics, the proposals would improve NSCC's ability to apply the ECP charge more consistently across its Members and reduce the impact this charge could have on competition. As noted above, in the impact study results, the proposed changes are also expected

⁴⁴ *Id.*

⁴⁵ 17 CFR 240.17Ad-22(e)(6)(i).

⁴⁶ *Id.*

⁴⁷ 17 CFR 240.17Ad-22(e)(23)(ii).

⁴⁸ *Id.*

to result in fewer and lower ECP charges.

Further, NSCC does not believe the proposed rule change to improve the clarity and predictability of the calculation of the ECP charge would impact competition because this proposed change would not impact the calculation of Members' Required Fund Deposits. Therefore, this proposed change would not affect NSCC's operations or the rights and obligations of membership. As such, NSCC believes the proposed rule change to improve the transparency of the Rules would not have any impact 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, 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 <https://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

Section 19(b)(2) of the Act⁴⁹ provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines

that a longer period is appropriate and publishes the reasons for such determination.⁵⁰ The 180th day after publication of the Notice in the **Federal Register** is December 5, 2022.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act,⁵¹ the Commission designates February 3, 2023, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR-NSCC-2022-005.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NSCC-2022-005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NSCC-2022-005. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rulefilings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2022-005 and should be submitted on or before December 22, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal on or before December 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵²

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2022-26535 Filed 12-6-22; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96433; File No. SR-NYSECHX-2022-27]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of NYSE Chicago, Inc. To Reflect the Fee for Directed Orders Routed by the Exchange to an Alternative Trading System

December 1, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 21, 2022, the NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit

⁵² 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴⁹ 15 U.S.C. 78s(b)(2).

⁵⁰ 15 U.S.C. 78s(b)(2)(B)(ii)(II).

⁵¹ *Id.*