

## 2. What is the exposure and risk of loss to PBGC?

**Exposure.** The Plan is in a strong funded position. For each Plan year since the adoption of PPA, the Plan's actuary certified that it was not endangered, critical, or critical and declining status, and as of January 1, 2017, the Plan's funded percentage was 94.4%. The Plan is a Green zone plan with steady contributions and a solid base of active participants.

**Risk of loss.** The record shows that the proposed amendment presents a low risk of loss to PBGC's multiemployer insurance program. SCA employers constitute a small part of the total number of employers obligated to contribute to the Plan. Eight of the Plan's approximately 130 contributing employers are SCA employers and 3% of the Plan's active participants are employed by SCA Employers. In addition, the industry covered by the amendment has unique characteristics that suggest the SCA Employers' contribution base is likely to remain stable, and the historical data provided by the Plan demonstrates that if the proposed amendment had always been in effect, the Plan's withdrawal liability payments would have been reduced by only .03% of the Plan's \$1.8 billion assets. Accordingly, the data substantiates the Plan's assertions that the SCA Employer contribution base is secure and the amendment will not pose a significant risk to the insurance system.

## Conclusion

Based on the Plan's submissions and the representations and statements made in connection with the request for approval, PBGC has determined that the plan amendment adopting the special withdrawal liability rules (1) will apply only to an industry that has characteristics that would make the use of special withdrawal liability rules appropriate, and (2) will not pose a significant risk to the insurance system. Therefore, PBGC hereby grants the Plan's request for approval of a plan amendment providing special withdrawal liability rules, as set forth herein. Should the Plan wish to amend these rules at any time, PBGC approval of the amendment will be required.

Issued in Washington, DC.

**William Reeder,**

*Director, Pension Benefit Guaranty Corporation.*

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**BILLING CODE 7709-02-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84257; File No. SR-NYSEArca-2018-55]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the GraniteShares Gold MiniBAR Trust Pursuant to NYSE Arca Rule 8.201-E

September 21, 2018

#### I. Introduction

On July 19, 2018, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the GraniteShares Gold MiniBAR Trust ("Trust") under NYSE Arca Equities Rule 8.201-E. The proposed rule change was published for comment in the **Federal Register** on August 8, 2018.<sup>3</sup> On September 14, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission has not received any comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. The Description of the Proposed Rule Change, as Modified by Amendment No. 1<sup>5</sup>

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201-E,<sup>6</sup> which governs the listing and trading of Commodity-

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

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

<sup>3</sup> See Securities Exchange Act Release No. 83765 (Aug. 2, 2018), 83 FR 39138 ("Notice").

<sup>4</sup> In Amendment No. 1, the Exchange: (1) Asserted that gold futures contribute to and provide evidence of the liquidity of the overall market for gold; and (2) stated that the Chicago Mercantile Exchange Group ("CME Group") and ICE Futures US ("ICE") are members of the Intermarket Surveillance Group ("ISG"). Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-NYSEArca-2018-55/srnysearca201855-4348511-173281.pdf>.

<sup>5</sup> A more detailed description of the Trust and the Shares, the creation and redemption of Shares, the NAV, the availability of information, among other things, is included in the Registration Statement, *infra* note 6, and the Notice, *supra* note 3.

<sup>6</sup> The Trust has filed a registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a), dated July 2, 2018 (File No. 333-226034) ("Registration Statement").

Based Trust Shares on the Exchange.<sup>7</sup> The Shares will represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust will be for the Shares to reflect the performance of the price of gold, less the expenses and liabilities of the Trust.

The sponsor of the Trust is GraniteShares LLC ("Sponsor"). The "Trustee" is The Bank of New York Mellon and the "Custodian" is ICBC Standard Bank Plc.

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposed rule change, as modified by Amendment No. 1, to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>9</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The last-sale price for the Shares will be disseminated over the Consolidated Tape. According to the Exchange, there is a considerable amount of information about gold and gold markets available on public websites and through professional and subscription services. Investors may obtain gold pricing information on a 24-hour basis based on the spot price for an ounce of gold from various financial information service providers.<sup>10</sup>

<sup>7</sup> A "Commodity-Based Trust Share" is a security (a) that is issued by a trust that holds a specified commodity deposited with the trust; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity. See NYSE Arca Equities Rule 8.201(c)(1).

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>10</sup> The Exchange states that Reuters and Bloomberg, for example, provide at no charge on their websites delayed information regarding the spot price of Gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on

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Additionally, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act,<sup>11</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Exchange has surveillance-sharing agreements with significant, regulated markets for trading futures on gold. Specifically, according to the Exchange: (1) The most significant gold futures exchange in the U.S. is COMEX, a subsidiary of New York Mercantile Exchange, Inc., and a subsidiary of the CME Group; (2) ICE also lists gold futures;<sup>12</sup> and (3) the CME Group and ICE are members of the ISG,<sup>13</sup> which will allow NYSE Arca to obtain surveillance information from COMEX and ICE. Both COMEX and ICE are regulated by the U.S. Commodity Futures Trading Commission ("CFTC").<sup>14</sup> The gold futures market is of significant size and liquidity.<sup>15</sup>

The Commission believes that the proposed rule change, as modified by Amendment No. 1, is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. NYSE Arca Equities Rule 8.201-E(e)(2)(v) requires that an intraday indicative value ("IIV," which is referred to in the

gold prices directly from market participants. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. There are a variety of other public websites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers. In addition, the LBMA Gold Price is publicly available at no charge at [www.lbma.org.uk](http://www.lbma.org.uk). See Notice, *supra* note 3, 83 FR at 39140.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See Notice, *supra* note 3, 83 FR at 39139.

<sup>13</sup> See Amendment No. 1, *supra* note 4.

<sup>14</sup> See Securities Exchange Act Release No. 82593 (January 26, 2018), 83 FR 4718, 4719 (February 1, 2018) (approving the listing and trading of shares of the Perth Mint Physical Gold ETF).

<sup>15</sup> The Commission notes that it has approved the listing and trading of other Commodity-Based Trust Shares overlying gold. See, e.g., Securities Exchange Act Release No. 81918 (October 23, 2017), 82 FR 49884 (October 27, 2017) (SR-NYSEArca-2017-98); Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 71378 (January 29, 2014) (SR-NYSEArca-2013-137); and Securities Exchange Act Release No. 70195 (August 14, 2013), 78 FR 51239 (August 20, 2013) (SR-NYSEArca-2013-61). See also Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579, 37594 (August 1, 2018) (SR-BatsBZX-2016-30) (disapproving the listing and trading of shares of the Winklevoss Bitcoin Trust).

rule as the "Indicative Trust Value") be calculated and disseminated at least every 15 seconds. The IIV will be calculated based on the amount of gold held by the Trust and a price of gold derived from updated bids and offers indicative of the spot price of gold. The Exchange states that the IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.<sup>16</sup> The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's website.<sup>17</sup> The Trust also will publish the following information on their website: (1) The mid-point of the bid-ask price as of the close of trading ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; (2) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters; (3) the Trust's prospectus, as well as the two most recent reports to stockholders; and (4) the last-sale price of the Shares as traded in the U.S. market.<sup>18</sup> In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The Commission also believes that the proposal, as modified by Amendment No. 1, is reasonably designed to prevent trading when a reasonable degree of transparency cannot be assured. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market

volatility pursuant to the Exchange's "circuit breaker" rule.<sup>19</sup> The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily.<sup>20</sup> The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV; if the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>21</sup>

Additionally, the Commission notes that market makers in the Shares will be subject to the requirements of NYSE Arca Equities Rule 8.201-E(g), which are designed to allow the Exchange to ensure that they do not use their positions to violate the requirements of Exchange rules or applicable federal securities laws.<sup>22</sup>

In support of this proposal, the Exchange has made the following additional representations:

(1) The Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.201-E.<sup>23</sup>

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.<sup>24</sup>

(3) The Exchange deems the Shares to be equity securities.<sup>25</sup>

(4) The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.<sup>26</sup>

(5) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these

<sup>19</sup> See *id.* at 39141.

<sup>20</sup> See *id.*

<sup>21</sup> See *id.*

<sup>22</sup> Commentary .04 of NYSE Arca Equities Rule 6.3 requires that an ETP Holder acting as a registered market maker in the Shares, and its affiliates, establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments.

<sup>23</sup> See *id.* at 39142.

<sup>24</sup> See *id.* at 39141.

<sup>25</sup> See *id.* The Commission notes that, as a result, trading of the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

<sup>26</sup> See *id.* at 39141-42.

<sup>16</sup> See Notice, *supra* note 3, 83 FR at 39142.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.* at 39140-41.

procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>27</sup>

(6) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>28</sup>

(7) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information.<sup>29</sup>

(8) All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute

continued listing requirements for listing the Shares on the Exchange.<sup>30</sup>

(9) The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).<sup>31</sup>

This approval order is based on all of the Exchange's representations—including those set forth above, in the Notice, and in Amendment No. 1—and the Exchange's description of the Trust.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Sections 6(b)(5) and 11A(a)(1)(C)(iii) of the Act<sup>32</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposed rule change. 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](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEArca–2018–55 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–NYSEArca–2018–55. 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 this filing will also 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–NYSEArca–2018–55 and should be submitted on or before October 18, 2018.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the **Federal Register**. Amendment No. 1 supplements the proposal by providing additional information regarding regulation of the gold futures market. This information assisted the Commission in evaluating the Shares' susceptibility to manipulation. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,<sup>33</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>34</sup> that the proposed rule change (SR–NYSEArca–2018–55), as modified by Amendment No. 1 be, and it hereby is, approved.

<sup>27</sup> See *id.* at 39141. FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. See *id.* at 39141, n.28.

<sup>28</sup> See *id.* at 39141.

<sup>29</sup> See *id.* at 39142.

<sup>30</sup> See *id.* See also NYSE Arca Rule 8.201–E(e)(2)(vii).

<sup>31</sup> See Notice, *supra* note 3, at 39142.

<sup>32</sup> 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78k–1(a)(1)(C)(iii), respectively.

<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

Eduardo A. Aleman,  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84259; File No. SR-NSCC-2018-007]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify the Rules That Describe the Buy-In Process

September 21, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 19, 2018, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of modifications to the Rules and Procedures of NSCC (“Rules”)<sup>5</sup> in order to enhance the rules and procedures that describe the process by which a Member entitled to receive securities from the Corporation, where such securities have failed to deliver, may submit a notice of its intent to purchase, or “buy-in,” any or all of such securities and the processing of the subsequent execution of that buy-in. The proposed changes would not change how buy-ins are processed at NSCC, but would clarify and simplify the rules that

govern this processing, as described 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

NSCC is proposing to make certain revisions to Rule 10 (Failure to Deliver on Security Balance Orders), Section 7 of Rule 11 (CNS System), Section J of Procedure VII (CNS Accounting Operation), and Sections A and B of Procedure X (Execution of Buy-Ins) of the Rules, which describe the process by which a Member entitled to receive securities (such quantity of securities is defined in the Rules as that Member’s “Long Position”), where such securities have failed to deliver, may provide NSCC with notice of its intent to buy-in any or all of its Long Position.<sup>6</sup> These rules also describe the processing of the subsequent execution of that buy-in.

First, the proposed changes would update and simplify the Rules by removing statements that do not provide important information to Members regarding the buy-in processing service, and NSCC believes this proposed change would make the Rules clearer and more easily understood by Members. For example, these proposed changes would remove descriptions of processing that do not occur at NSCC, and descriptions of rules that are not enforced by NSCC.

Second, the proposed changes would revise, clarify and enhance the transparency of these rules by, for example, (1) reorganizing the rules governing buy-in processing such that they appear in fewer places in the Rules, (2) revising certain statements and adding new descriptions of buy-in processing to improve the transparency of these rules, and (3) correcting and updating the uses of defined terms. NSCC believes making these descriptions clearer would enhance

Members’ understanding of their rights and obligations in connection with this service.

Each of these proposed changes is described below.

###### (i) Overview of the Buy-In Process

Under the Rules, a Member with a Long Position (referred to as the “originator”) may submit to NSCC a notice of its intention to buy-in any or all of its Long Position. Such notice is currently referred to in the Rules as “Notice of Intention to Buy-In” and a “Buy-In Notice” and must specify the quantity of securities, not exceeding the originator’s Long Position, it intends to buy-in (such quantity of securities is referred to as the “Buy-In Position”). As described in Section J of Procedure VII of the Rules, Buy-In Notices may be either (1) submitted directly to NSCC by the originator, and such Buy-In Notices are referred to as an “Original Buy-In Notice,” or (2) submitted directly to NSCC by the originator as a “Buy-In Retransmittal Notice” after the originator has received notice that it has failed to deliver securities away from NSCC. References to Buy-In Notices include both Original Buy-In Notices and Buy-In Retransmittal Notices.

The day the Buy-In Notice is submitted to NSCC is referred to as N, and N+1 and N+2 refer to the succeeding days. Original Buy-In Notices expire on N+2 and Buy-In Retransmittal Notices expire on N+1. The Buy-In Position is given high priority for allocation in NSCC’s Continuous Net Settlement (“CNS”)<sup>7</sup> system through the completion of CNS allocations in the day cycle on the day the buy-in expires.

If, with respect to Original Buy-In Notices, a Buy-in Position remains unfilled after the completion of the CNS allocation in the evening cycle on N+1, or shortly after the receipt of a Buy-In Retransmittal Notice, NSCC issues CNS Retransmittal Notices to those Members with the oldest Short Positions in those securities in an amount equal to the originator’s Long Position. Such notices specify the originator and the total quantity of securities requested in the Buy-In Notice. If several Members have Short Positions with the same age, all

<sup>7</sup> CNS is an on-going accounting system which nets each day’s settling trades with the prior day’s closing positions, producing new Short or Long Positions per security issue for each Member. NSCC is always the contra side for all positions. The positions are then passed against the Member’s Designated Depository positions and available securities are allocated by book-entry. This allocation of securities is accomplished through an evening cycle followed by a day cycle. CNS and its operation are described in Rule 11 and Procedure VII of the Rules. *Supra* note 5.

<sup>35</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4).

<sup>5</sup> Available at <http://www.dtcc.com/legal/rules-and-procedures>. Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Rules.

<sup>6</sup> *Id.*