Methodology. Because the relief requested is the same as certain of the relief granted by the Commission under the Reference Order and because the Initial Adviser has entered into a licensing agreement with NYSE Group, Inc. in order to offer Funds that utilize the NYSE Proxy Portfolio Methodology,[3] the Order would incorporate by reference the terms and conditions of the same relief of the Reference Order.

5. Applicants request that the Order apply to the Initial Fund and to any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Initial Adviser or any entity controlling, controlled by, or under common control with the Initial Adviser (any such entity, along with the Initial Adviser, included in the term ''Adviser''); (b) offers exchange-traded shares utilizing active management investment strategies as contemplated by the Reference Order; and (c) complies with the terms and conditions of the Order and the terms and conditions of the Reference Order that are incorporated by reference into the Order (each such company or series and the Initial Fund, a ''Fund'').[4]

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Applicants submit that for the reasons stated in the Reference Order the requested relief meets the exemptive standards under sections 6(c) and 17(b) of the Act.

[3] The NYSE Proxy Portfolio Methodology (as defined in the Reference Order) is the intellectual property of the NYSE Group, Inc.

[4] All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and the terms and conditions of the Reference Order that are incorporated by reference into the Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–28235 Filed 12–28–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93856; File No. SR–NSCC–2021–016]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Enhance Capital Requirements and Make Other Changes

December 22, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2021, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to the Rules & Procedures (''Rules'') of NSCC in order to (i) enhance NSCC's capital requirements for Members and Limited Members (collectively, ''members''), (ii) redefine NSCC's Watch List and eliminate NSCC's enhanced surveillance list, and (iii) make certain other clarifying, technical and supplementary changes in the Rules, including definitional updates, to accomplish items (i) and (ii), as described in greater detail below.[3]

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

The purpose of this proposed rule change is to (i) enhance NSCC's capital requirements for Members and Limited Members (collectively, ''members''), (ii) redefine NSCC's Watch List and eliminate NSCC's enhanced surveillance list, and (iii) make certain other clarifying, technical and supplementary changes in the Rules, including definitional updates, to accomplish items (i) and (ii).

(i) Background

Central counterparties (''CCPs'') play a key role in financial markets by mitigating counterparty credit risk on transactions of their participants. CCPs achieve this by providing guaranties to participants and, as a consequence, are typically exposed to credit risks that could lead to default losses.

As a CCP, NSCC is exposed to the credit risks of its members. The credit risks borne by NSCC are mitigated, in part, by the capital maintained by members, which serves as a loss-absorbing buffer.

In accordance with Section 17A(b)(4)(B) of the Exchange Act,[4] a registered clearing agency such as NSCC may, among other things, deny participation to, or condition the participation of, any person on such person meeting such standards of financial responsibility prescribed by the rules of the registered clearing agency.

In furtherance of this authority, NSCC requires applicants and members to meet the relevant financial responsibility standards prescribed by the Rules. These financial responsibility standards generally require members to have and maintain certain levels of capital, as more particularly described in the Rules and below.

NSCC's capital requirements for its members have not been updated in over 20 years. Since that time, there have been significant changes to the financial markets that warrant NSCC revisiting its capital requirements. For example, the regulatory environment within which NSCC and its members operate has undergone various changes. The

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

[2] 17 CFR 240.19b–4.

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

[4] 15 U.S.C. 78q–1(b)(4)(B).

implementation of the Basel III standards,[5] the designation of many banks as systemically important by the Financial Stability Board,[6] as well as the designation of NSCC as a systemically important financial market utility (''SIFMU'') by the Financial Stability Oversight Council,[7] have significantly increased the regulatory requirements, including capital requirements, of many financial institutions and CCPs. Similarly, the Covered Clearing Agency Standards (''CCAS'') adopted by the Commission have raised the regulatory standards applicable to CCPs such as NSCC.[8]

There also have been significant membership changes over the past 20 years. Numerous mergers, acquisitions, and new market entrants have created a diverse NSCC membership that has expanded the credit-risk profiles that NSCC must manage. For example, NSCC has seen an increase in less capitalized market participants focusing on niche parts of the market with innovative new business models.

Additionally, trading activity and market volatility, each of which present risk to NSCC, ballooned over the years.[9] While NSCC does collect margin from its members to help address these types of risk, it is imperative that NSCC ensure that its members have sufficient capital to sustain unexpected and/or sustained increases in margin requirements. Although the above factors do not directly require NSCC to increase capital requirements for its membership (*e.g.,* there is no specific regulation or formula that prescribes a set capital requirement for members of a CCP such as NSCC), the overarching and collective focus of the regulatory changes noted above, in light of the many heightened risks to the financial industry, has been to increase the stability of the financial markets in order to reduce systemic risk. As a self-regulatory organization, a SIFMU, and being exposed to the new and increased risks over the past 20 years, NSCC has a responsibility to do the same. Enhancing its capital requirements helps meet that responsibility and improve NSCC's credit risk management. Enhanced capital requirements also help mitigate other risks posed directly or indirectly by members such as legal risk, operational risk and cyber risk, as better capitalized members have greater financial resources in order to mitigate the effects of these and other risks.

As for setting the specific capital requirements proposed, again, there is no regulation or formula that requires or calculates a specific amount (*i.e.,* there is no magic number). Instead, NSCC considered several factors, including inflation and the capital requirements of other Financial Market Infrastructures, both in the U.S. and abroad, to which the proposed requirements align.[10] NSCC also gave much weight to the historical development of the proposal, which involved member outreach and feedback as far back as 2013.

In 2013, NSCC considered increasing its minimal capital requirements for members that self-clear and those that clear for others to much higher, fixed amounts than what are proposed here. However, some members expressed concerns that the amounts were too high and rigid, and would present undue burden on less capitalized firms. As such, NSCC then considered lowering the amounts considerably, such that the amounts would more directly reflect inflation but with an adjustment factor related to volume activity. In response, though, members expressed concern over the volume adjustment, which NSCC also determined to be too challenging and costly to implement, and too complex to monitor for both NSCC and members. Ultimately, NSCC settled on the current proposal, which it believes strikes the right balance between continuing to provide access for less capitalized firms and the need to mitigate risk to NSCC and its members, as described in more detail below.

NSCC also proposes to redefine the Watch List, which is a list of members that are deemed by NSCC to pose a heightened risk to it and its members based on credit ratings and other factors. As part of the redefinition of the Watch List, NSCC proposes to eliminate the separate enhanced surveillance list and implement a new Watch List that consists of a relatively smaller group of members that exhibit heightened credit risk, as described in more detail below.

Finally, NSCC proposes to make certain other clarification changes in the Rules.

(ii) Current NSCC Capital Requirements

The Rules currently specify capital requirements for members based on their membership type and type of entity. The current NSCC capital requirements for members are set forth in Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History),[11] as supplemented by Addendum O (Admission of Non-U.S. Entities as Direct NSCC Members) [12] in the case of non-U.S. entities.

Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History)

Addendum B is divided into 12 sections, one for each NSCC membership type. Each section of Addendum B sets forth the qualifications, financial responsibility, operational capability and business history requirements applicable to the relevant membership type.

An applicant for a membership type is required to meet the qualifications, financial responsibility, operational capability and business history requirements applicable to the relevant membership type, which may vary based on the applicant's type of entity (*e.g.,* a broker-dealer vs. a bank or trust company). In particular, financial responsibility requirements for a membership type, which generally require the applicant to maintain a certain level of capital, may vary based on an applicant's type of entity and the

[5] Basel Committee on Banking Supervision, The Basel Framework, *available at https://www.bis.org/basel_framework/index.htm?export=pdf* (''Basel III Standards'').

[6] *See* Financial Stability Board, 2021 list of global systemically important banks, *available at https://www.fsb.org/wp-content/uploads/P231121.pdf.*

[7] *See* U.S. Department of the Treasury, Designations, Financial Market Utility Designations, *available at https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc/designations.*

[8] 17 CFR 240.17Ad–22(e).

[9] *See, e.g.,* DTCC Annual Reports, *available at https://www.dtcc.com/about/annual-report.* NSCC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation (''DTCC''). The DTCC Annual Reports highlight and track NSCC clearing activity year-over-year. *See also* CBOE Volatility Index (*i.e.,* the VIX) *available at https://www.cboe.com/tradable_products/vix/.* The VIX is designed to measure market volatility, highlights a rollercoaster of volatility over the past 14 years, including historic and near-historic peaks.

[10] *See* The Options Clearing Corporation, OCC Rules, Rule 301(a), *available at https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules* (requiring broker-dealers to have initial net capital of not less than $2,500,000); Chicago Mercantile Exchange Inc., CME Rulebook, Rule 970.A.1, *available at https://www.cmegroup.com/rulebook/CME/I/9/9.pdf* (requiring clearing members to maintain capital of at least $5 million, with banks required to maintain minimum tier 1 capital of at least $5 billion); LCH SA, LCH SA Clearing Rule Book, Section 2.3.2, *available at https://www.lch.com/resources/rulebooks/lch-sa* (requiring, with respect to securities clearing, capital of at least EUR 10 million for self-clearing members and at least EUR 25 million for members clearing for others, subject to partial satisfaction by a letter of credit) (1 EUR = $0.8150 as of December 31, 2020; *see https://www.fiscal.treasury.gov/reports-statements/treasury-reporting-rates-exchange/current.html* (last visited January 14, 2021)).

[11] Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History), *supra* note 3.

[12] Addendum O (Admission of Non-U.S. Entities as Direct NSCC Members), *supra* note 3.

relevant capital measure for such type of entity.

As relevant to NSCC's proposal to enhance its capital requirements for members:

Section 1

Section 1 of Addendum B sets forth the qualifications, financial responsibility, operational capability and business history requirements applicable to Members. The financial responsibility requirements in Section 1 consist of the following capital requirements:

Section 1.B.1 of Addendum B provides that a Registered Broker-Dealer applying to be a Member must have excess net capital (*i.e.,* capital in excess of the minimum net capital required by the Commission or such higher minimum capital required by its designated examining authority) in the amount of $500,000 if the Registered Broker-Dealer does not clear for others or $1 million if the Registered Broker-Dealer clears for others.

An applicant that is a Municipal Securities Brokers' Brokers (as defined in Rule 15c3–1(a)(8) under the Exchange Act) [13] is subject to a lower excess net capital requirement of $100,000.

Section 1.B.2 of Addendum B provides that a bank applying to be a Member must (i) have at least $50 million in equity capital (as defined on the Consolidated Report of Condition and Income (''Call Report'')) or (ii) have furnished to NSCC a guarantee of its parent bank holding company respecting the payment of any and all obligations of the bank applicant, and such parent bank holding company must have total consolidated capital of at least $50 million.

In the case of a trust company applying to be a Member that is not a bank but is a member of the Federal Reserve System or is an institution insured under the Federal Deposit Insurance Act, the trust company must have consolidated capital of at least $10 million and that is adequate to the scope and character of the business conducted by such trust company.

Section 1.B.3 of Addendum B provides that an entity applying to be a Member other than a Registered Broker-Dealer, bank or trust company is required to satisfy such minimum standards of financial responsibility as determined by NSCC.

Section 2

Section 2 of Addendum B sets forth the qualifications, financial responsibility, operational capability and business history requirements applicable to Mutual Fund/Insurance Services Members. The financial responsibility requirements in Section 2 consist of the following capital requirements:

Section 2.B.1 of Addendum B provides that a Registered Broker-Dealer applying to be a Mutual Fund/Insurance Services Member must have excess net capital in the amount of $50,000.

Section 2.B.2 of Addendum B provides that a bank or trust company applying to be a Mutual Fund/Insurance Services Member must (i) have a Tier 1 Risk Based Capital (''RBC'') ratio of 6% or greater or (ii) with respect to trust companies which do not calculate a Tier 1 RBC ratio, have at least $2 million in equity capital.

Section 2.B.3 of Addendum B provides that an Insurance Company applying to be a Mutual Fund/Insurance Services Member must have an RBC ratio, as derived from annual statutory financial statements filed by it with its supervisory or regulatory entity (or, between filings of such annual statutory financial statements, an RBC ratio derived in a similar manner from then-current financial data), of 250% or greater.

Section 2.B.4 of Addendum B provides that an entity applying to be a Mutual Fund/Insurance Services Member other than a Registered Broker-Dealer, bank or trust company or Insurance Company is required to satisfy such minimum standards of financial responsibility as determined by NSCC.

Section 3

Section 3 of Addendum B sets forth the qualifications, financial responsibility, operational capability and business history requirements applicable to Fund Members. The financial responsibility requirements in Section 3 consist of the following capital requirements:

Section 3.B.1 of Addendum B provides that a Registered Broker-Dealer applying to be a Fund Member must have excess net capital in the amount of $50,000.

Section 3.B.2 of Addendum B provides that a bank or trust company applying to be a Fund Member must (i) have a Tier 1 RBC ratio of 6% or greater or (ii) with respect to trust companies which do not calculate a Tier 1 RBC ratio, have at least $2 million in equity capital.

Section 3.B.3 of Addendum B provides that an investment company applying to be a Fund Member must have at least $100,000 in assets under management.

Section 3.B.4 of Addendum B provides that an investment adviser applying to be a Fund Member must have at least $25,000,000 in assets under management and $100,000 in total net worth.

Section 3.B.5 of Addendum B provides that an Insurance Company applying to be a Fund Member must have an RBC ratio, as derived from annual statutory financial statements filed by it with its supervisory or regulatory entity (or, between filings of such annual statutory financial statements, an RBC ratio derived in a similar manner from then-current financial data), of 250% or greater.

Section 3.B.6 of Addendum B provides that an entity applying to be a Fund Member other than a Registered Broker-Dealer, bank or trust company, investment company, investment adviser or Insurance Company is required to satisfy such minimum standards of financial responsibility as determined by NSCC.

Section 4

Section 4 of Addendum B sets forth the qualifications, financial responsibility, operational capability and business history requirements applicable to Insurance Carrier/Retirement Services Members. The financial responsibility requirements in Section 4 consist of the following capital requirement:

Section 4.B of Addendum B provides that an Insurance Company applying to be an Insurance Carrier/Retirement Services Member must have an RBC ratio, as derived from annual statutory financial statements filed by it with its supervisory or regulatory entity (or, between filings of such annual statutory financial statements, an RBC ratio derived in a similar manner from then-current financial data), of 250% or greater.

Section 7

Section 7 of Addendum B sets forth the qualifications, financial responsibility and operational capability requirements applicable to Settling Bank Only Members. The financial responsibility requirements in Section 7 consist of the following capital requirement:

Section 7.B of Addendum B provides that a bank or trust company applying to be a Settling Bank Only Member is required to satisfy such minimum standards of financial responsibility as determined by NSCC.

[13] 17 CFR 240.15c3–1(a)(8).

Addendum O (Admission of Non-U.S. Entities as Direct NSCC Members)

Addendum O (Admission of Non-U.S. Entities as Direct NSCC Members) provides that an entity that is organized in a country other than the United States and that is not otherwise subject to U.S. federal or state regulation (a ''non-U.S. entity'') is eligible to become a Member, Mutual Fund/Insurance Services Member, Fund Member or Insurance Carrier/Retirement Services Member, subject to certain conditions.

One of the conditions for a non-U.S. entity to be admitted as a Member, Mutual Fund/Insurance Services Member, Fund Member or Insurance Carrier/Retirement Services Member is that the entity must provide NSCC, for financial monitoring purposes, audited financial statements prepared in accordance with either U.S. generally accepted accounting principles (''U.S. GAAP'') or other generally accepted accounting principles that are satisfactory to NSCC.

In order to address the risk presented by the acceptance of financial statements not prepared in accordance with U.S. GAAP, Addendum O provides that the minimum financial requirements applicable to a non-U.S. entity will be subject to a specified premium, as follows:

i. For financial statements prepared in accordance with International Financial Reporting Standards, the U.K. Companies Act of 1985 (''U.K. GAAP''), or Canadian generally accepted accounting principles—a premium of 1½ times the minimum financial requirements;

ii. for financial statements prepared in accordance with a European Union country's generally accepted accounting principles, other than U.K. GAAP—a premium of 5 times the minimum financial requirements; and

iii. for financial statements prepared in accordance with any other type of generally accepted accounting principles—a premium of 7 times the minimum financial requirements.

Accordingly, a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP is required to meet financial requirements between 1½ to 7 times the minimum financial requirements that would otherwise be applicable to the non-U.S entity. Given that, as noted above, the financial responsibility requirements generally require a member to have a certain level of capital, Addendum O has the effect of requiring a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP to have capital between 1½ to 7 times the otherwise-applicable capital requirement.

(iii) Current NSCC Watch List and Enhanced Surveillance List

NSCC's Watch List is a list of members that are deemed by NSCC to pose a heightened risk to it and its members based on credit ratings and other factors.[14]

Specifically, the Watch List is the list of Members with credit ratings derived from NSCC's Credit Risk Rating Matrix (''CRRM'') [15] of 5, 6 or 7, as well as members that, based on NSCC's consideration of relevant factors, including those set forth in Section 4(d) of Rule 2B (Ongoing Membership Requirements and Monitoring),[16] are deemed by NSCC to pose a heightened risk to it and its members.

In addition to the Watch List, NSCC also maintains a separate list of members subject to enhanced surveillance in accordance with the provisions of Rule 2B, as discussed below. The enhanced surveillance list is a list of members for which NSCC has heightened credit concerns, which may include members that are already, or may soon be, on the Watch List. As described below, a member is subject to the same potential consequences from being subject to enhanced surveillance or being placed on the Watch List.

Rule 2B (Ongoing Membership Requirements and Monitoring)

Rule 2B (Ongoing Membership Requirements and Monitoring) specifies the ongoing membership requirements and monitoring applicable to members.[17]

Section 2.B.(e) of Rule 2B provides that NSCC may review the financial responsibility and operational capability of a Member and otherwise require from the Member additional reporting of its financial or operational condition in order to make a determination as to whether such Member should be placed on the Watch List and/or be subject to enhanced surveillance by NSCC consistent with the provisions of Section 4 of Rule 2B.

Section 4(b) of Rule 2B provides that a Member that is (1) a U.S. bank or trust company that files a Call Report, (2) a U.S. broker-dealer that files the Financial and Operational Combined Uniform Single Report (''FOCUS Report'') or the equivalent with its regulator, or (3) a non-U.S. bank or trust company that has audited financial data that is publicly available, will be assigned a credit rating by NSCC in accordance with the CRRM. A Member's credit rating is reassessed each time the Member provides NSCC with requested information pursuant to Section 2.B.(e) of Rule 2B or as may be otherwise required under the Rules.

Section 4(b) further provides that because the factors used as part of the CRRM may not identify all risks that a Member assigned a credit rating by NSCC may present to NSCC, NSCC may, in its discretion, override such Member's credit rating derived from the CRRM to downgrade the Member. This downgrading may result in the Member being placed on the Watch List and/or it may subject the Member to enhanced surveillance based on relevant factors.

Section 4(c) of Rule 2B provides that Members not assigned a credit rating by NSCC and Limited Members monitored and reviewed by NSCC on an ongoing and periodic basis will not be assigned a credit rating by the CRRM but may be placed on the Watch List and/or may be subject to enhanced surveillance based on relevant factors.

Section 4(d) of Rule 2B provides that the factors to be considered by NSCC in determining whether a member is placed on the Watch List and/or subject to enhanced surveillance include (i) news reports and/or regulatory observations that raise reasonable concerns relating to the member, (ii) reasonable concerns around the member's liquidity arrangements, (iii) material changes to the member's organizational structure, (iv) reasonable concerns about the member's financial stability due to particular facts and circumstances, such as material litigation or other legal and/or regulatory risks, (v) failure of the member to demonstrate satisfactory financial condition or operational capability or if NSCC has a reasonable concern regarding the member's ability to maintain applicable membership standards, and (vi) failure of the member to provide information required by NSCC to assess risk exposure posed by the member's activity.

---

[14] *See* Rule 1 (Definitions and Descriptions), *supra* note 3.

[15] NSCC's CRRM is a matrix of credit ratings of Members specified in Section 4 of Rule 2B. The CRRM is developed by NSCC to evaluate the credit risk Members pose to NSCC and its Members and is based on factors determined to be relevant by NSCC from time to time, which factors are designed to collectively reflect the financial and operational condition of a Member. These factors include (i) quantitative factors, such as capital, assets, earnings, and liquidity, and (ii) qualitative factors, such as management quality, market position/environment, and capital and liquidity risk management. *See* Rule 1 (Definitions and Descriptions), *supra* note 3.

[16] Rule 2B (Ongoing Membership Requirements and Monitoring), Section 4 (Ongoing Monitoring), *supra* note 3.

[17] Rule 2B (Ongoing Membership Requirements and Monitoring), *supra* note 3.

Section 4(e) of Rule 2B provides that NSCC may require a member that has been placed on the Watch List to make and maintain a deposit to the Clearing Fund over and above the amount determined in accordance with Procedure XV (Clearing Fund Formula and Other Matters) (which additional deposit shall constitute a portion of the member's Required Fund Deposit) or such higher amount as NSCC may deem necessary for the protection of it or other members.

Section 4(f) of Rule 2B provides that a member being subject to enhanced surveillance or being placed on the Watch List (1) will result in a more thorough monitoring of the member's financial condition and/or operational capability, including on-site visits or additional due diligence information requests, and (2) may be required make more frequent financial disclosures to NSCC. Members and Limited Members that are placed on the Watch List or subject to enhanced surveillance are also reported to NSCC's management committees and regularly reviewed by NSCC senior management.

(iv) Proposed Rule Changes

A. Changes To Enhance NSCC's Capital Requirements

As noted earlier, as a CCP, NSCC is exposed to the credit risks of its members. The credit risks borne by NSCC are mitigated, in part, by the capital maintained by members, which serves as a loss-absorbing buffer.

NSCC's financial responsibility standards for members generally require members to have and maintain certain levels of capital.

As described in more detail below, NSCC proposes to enhance its capital requirements for members as follows:

Members

U.S. Broker-Dealers

NSCC proposes increasing minimum excess net capital (''Excess Net Capital'') requirements for Members that are U.S. broker-dealers using a tiered approach.[18] These increases would be between 2 and 10 times the current minimum Excess Net Capital requirements applicable to Members that are U.S. broker-dealers, depending on whether the Member self-clears or clears for others and its VaR Tier, as described below. As described below, NSCC proposes to use, in general terms, calculations from its value-at-risk (''VaR'') model and associated Member charges as a measure of market risk in order to categorize Members into those that pose relatively minimal risk exposure, moderate risk exposure, or higher risk exposure to NSCC.

Unlike the current capital requirements applicable to Registered Broker-Dealers, the proposed enhanced capital requirements for U.S. broker-dealers would result in those Members whose NSCC activity poses greater risk to NSCC being required to have and maintain greater levels of Excess Net Capital in line with the increased risk.

As is the case with the current capital requirements applicable to Registered Broker-Dealers, the enhanced capital requirements for U.S. broker-dealers would depend on whether a Member self-clears or clears for others. A broker-dealer that clears transactions for others has the potential to present different and greater risks to NSCC than a broker-dealer that clears transactions only for itself, and it is therefore appropriate for such broker-dealer to be subject to heightened capital requirements versus a broker-dealer that clears transactions only for itself.

As described in more detail below, the proposed minimum Excess Net Capital increases will help ensure NSCC's ongoing compliance with regulatory requirements and expectations related to credit risk, such as those addressed in CCAS Rules 17Ad–22(e)(4)(i) and (e)(18).[19]

Under the proposal, a Member that is a U.S. broker-dealer must have and maintain at all times minimum Excess Net Capital as follows:

Clearing status	Value-at-risk tier (''VaR tier'')	Minimum excess net capital
Self-Clearing	<$100,000	$1 million Excess Net Capital
	$100,000–$500,000	2.5 million Excess Net Capital
	>$500,000	5 million Excess Net Capital
Clears for Others	<$100,000	2.5 million Excess Net Capital
	$100,000–$500,000	5 million Excess Net Capital
	>$500,000	10 million Excess Net Capital

The VaR Tier in the table above is based on the daily volatility component of a Member's Net Unsettled Positions calculated as of the start of each Business Day pursuant to Procedure XV of the Rules [20] as part of the Member's daily Required Fund Deposit. As part of the tiered approach, a Member's daily volatility component may exceed its then-current VaR Tier four times over a rolling 12-month period. Upon the fifth instance of the Member's daily volatility component exceeding its then-current VaR Tier, the Member would be moved to the next-greatest VaR Tier, unless the Member's daily volatility component also exceeded such next-greatest VaR Tier five times during the preceding 12-month period, in which case the Member would be moved to the greatest VaR Tier.

Upon moving to a greater VaR Tier, a Member would then have 60 calendar days from the date of the move to meet the higher required minimum Excess Net Capital for such VaR Tier. If a Member fails to meet its higher required minimum Excess Net Capital within 60 calendar days and maintain it for so long as such higher required minimum Excess Net Capital applies, NSCC may take any and all action against the Member pursuant to the Rules.

Upon moving to a greater VaR Tier, a Member would remain in that greater VaR Tier for no less than one continuous year from the date of the move before being eligible to move to a lesser VaR Tier. This does not in any way preclude a Member from moving to an even greater VaR Tier (if any) in accordance with the requirements of this proposal.

NSCC believes that allowing a Member's daily volatility component to exceed its then-current VaR Tier four times over a rolling 12-month period before the Excess Net Capital requirement would increase provides some flexibility for Members in the

[18] As part of the proposal, NSCC proposes to add the defined term ''Excess Net Capital'' to the list of defined terms in Rule 1. Excess Net Capital would be defined as a broker-dealer's excess net capital, calculated in accordance with such broker-dealer's regulatory and/or statutory requirements.

[19] 17 CFR 240.17Ad–22(e)(4)(i) and (e)(18).

[20] Procedure XV (Clearing Fund Formula and Other Matters), *supra* note 3.

event of occasional unexpected market volatility while also protecting NSCC from the risks of such increased daily volatility. NSCC has determined that giving a Member 60 calendar days from the date of its move to a higher VaR Tier to meet its higher required minimum Excess Net Capital appropriately balances the financial and other costs associated with requiring the Member to satisfy the higher required minimum Excess Net Capital with the increased risks posed by the Member's increased daily volatility. The 60-calendar day period also recognizes the practical limitations for a Member to be able to immediately increase its capital level, given that raising additional capital may require time for the Member to identify additional sources of capital such as outside investors, negotiate the terms of that capital, and execute any required legal documentation.

A Member would move to a lesser VaR Tier (if any) when (i) the Member has remained in its then-current VaR Tier for no less than one continuous year, (ii) the Member's daily volatility component did not exceed such lesser VaR Tier on five instances or more over the preceding 12-month period and (iii) if at any time the Member's daily volatility component did exceed such lesser VaR Tier on five instances or more over a rolling 12-month period, the Member has remained in its then-current VaR Tier for no less than one continuous year from the date of each such instance.

For example, if a Member's daily volatility component exceeds the lesser VaR Tier for the fifth time over a rolling 12-month period on February 1, 2021, then the Member would remain in its then-current VaR Tier until at least January 31, 2022. If the same Member's daily volatility component then exceeds the lesser VaR Tier for the sixth time over a rolling 12-month period on February 15, 2021, then the Member would remain in its then-current VaR Tier until at least February 14, 2022. This does not in any way preclude a Member from moving to an even greater VaR Tier (if any) in accordance with the requirements of this proposal.

Newly admitted Members would be placed into the applicable middle VaR Tier in the table above unless NSCC determines, based on information provided by or concerning the Member, that the Member's anticipated VaR Tier for its anticipated trading activity would be the greatest VaR Tier, in which case the Member would be placed into the greatest VaR Tier. Any such determination would be promptly communicated to, and discussed with, the Member. A newly admitted Member would remain in its initial VaR Tier until it moves to a different VaR Tier in accordance with the requirements of this proposal.

Based on its historical experience with the daily volatility components of newly admitted Members, including such Members' own projected trading activity,[21] NSCC believes that it would be appropriate to place newly admitted Members into the applicable middle VaR Tier in the table above for the first 12 months of membership unless NSCC has determined that the Member's anticipated VaR Tier based on its anticipated trading activity would be the greatest VaR Tier.

NSCC proposes to move the existing capital requirements for Members that are Municipal Securities Brokers' Brokers or Municipal Securities Brokers' Broker sponsored account applicants to the end of Section 1.B.1 of Addendum B with some clarifying changes to improve the accessibility and transparency of these capital requirements, without substantive effect.

U.S. Banks and Trust Companies

NSCC proposes to (1) change the measure of capital requirements for U.S. banks and trust companies from equity capital to common equity tier 1 capital (''CET1 Capital''),[22] (2) raise the minimum capital requirements for U.S. banks and trust companies, and (3) require U.S. banks and trust companies to be well capitalized (''Well Capitalized'') as defined in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation (''FDIC'').[23]

NSCC proposes to change the measure of capital requirements for U.S. banks and trust companies from equity capital to CET1 Capital and raise the minimum capital requirements for U.S. banks and trust companies in order to align NSCC's capital requirements with banking regulators' changes to regulatory capital requirements over the past several years, which have standardized and harmonized the calculation and measurement of bank capital and leverage throughout the world.[24] Consistent with these changes by banking regulators, NSCC believes that the appropriate capital measure for Members that are U.S. banks and trust companies should be CET1 Capital and that NSCC's capital requirements for Members should be enhanced in light of these increased regulatory capital requirements.

In addition, requiring U.S. banks and trust companies to be Well Capitalized ensures that Members are well capitalized while also allowing adjusted capital to be relative to either the risk-weighted assets or average total assets of the bank or trust company. NSCC proposes to have the definition of Well Capitalized expressly tied to the FDIC's definition of ''well capitalized'' to ensure that the proposed requirement that U.S. banks and trust companies be Well Capitalized will keep pace with future changes to banking regulators' regulatory capital requirements.

Under the proposal, a Member that is a U.S. bank or a U.S. trust company that is a bank must (1) have and maintain at all times at least $500 million in CET1 Capital and be Well Capitalized at all times or (2) have furnished to NSCC a guarantee of its parent bank holding company respecting the payment of any and all obligations of the Member, and such parent bank holding company must have and maintain at all times CET1 Capital of at least $500 million and be Well Capitalized at all times.

NSCC does not propose to change the existing capital requirements applicable to a Member that is a U.S. trust company that is not a bank, although NSCC is proposing to make some clarifying and conforming language changes to improve the accessibility and transparency of these capital requirements, without substantive effect.

NSCC treats U.S. trust companies that are banks and non-banks differently because they present different risks based on the attendant risks of their business activities, with trust companies engaging in banking activities (*e.g.,* receiving deposits and making loans) being subject to greater risks than trust companies that limit their activities to trust activities (*e.g.,* acting as a trustee,

[21] For example, if the proposed VaR Tiers had been in effect for the past two years (but newly admitted Members were not automatically placed in at least the middle VaR Tier), only one U.S. broker-dealer applicant would have belonged in the lowest VaR Tier at admittance, but that firm then had trading activity that placed it in the middle VaR Tier in the first month and the highest VaR Tier in the second month of membership. *See* Internal Tiering Analysis, included as a Confidential Exhibit 3 to the filing.

[22] Under the proposal, CET1 Capital would be defined as an entity's common equity tier 1 capital, calculated in accordance with such entity's regulatory and/or statutory requirements.

[23] *See* 12 CFR 324.403(b)(1).

[24] *Compare, e.g.,* 12 CFR 324.20(b) (FDIC's definition of CET1 Capital), and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, Article 26, *available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0575* (European Union's definition of CET1 Capital), with Basel Committee on Banking Supervision, Basel III Standards, CAP10.6, *supra* note 5 (Basel III Standards' definition of CET1 Capital).

other fiduciary or transfer agent/registrar).

Non-U.S. Broker-Dealers and Banks

NSCC proposes to impose a minimum capital requirement of $25 million in total equity capital for Members that are non-U.S. broker-dealers.

NSCC proposes to require a Member that is a non-U.S. bank (including a U.S. branch or agency) to (1) (A) have and maintain at all times at least $500 million in CET1 Capital and comply at all times with the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D–SIB or G–SIB buffer, if applicable) and capital ratios required by its home country regulator, or, if greater, with such minimum capital requirements or capital ratios standards promulgated by the Basel Committee on Banking Supervision,[25] (B) provide an attestation for itself, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D–SIB or G–SIB buffer, if applicable) and capital ratios required by their home country regulator, (C) provide, no less than annually and upon request by NSCC, an attestation for the Member, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D–SIB or G–SIB buffer, if applicable) and capital ratios required by their home country regulator and (D) notify NSCC: (i) Within two Business Days of any of their capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D–SIB or G–SIB buffer, if applicable) or capital ratios falling below any minimum required by their home country regulator; and (ii) within 15 calendar days of any such minimum capital requirement or capital ratio changing; or (2) (A) have furnished to NSCC a guarantee of its parent bank holding company respecting the payment of any and all obligations of the Member, (B) have such parent bank holding company maintain at all times CET1 Capital of at least $500 million and comply at all times with the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D–SIB or G–SIB buffer, if applicable) and capital ratios required by its home country regulator, or, if greater, with such minimum capital requirements or capital ratios standards promulgated by the Basel Committee on Banking Supervision,[26] (C) provide an attestation for itself, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D–SIB or G–SIB buffer, if applicable) and capital ratios required by their home country regulator, (D) provide, no less than annually and upon request by NSCC, an attestation for the Member, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D–SIB or G–SIB buffer, if applicable) and capital ratios required by their home country regulator and (E) notify NSCC: (i) Within two Business Days of any of their capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D–SIB or G–SIB buffer, if applicable) or capital ratios falling below any minimum required by their home country regulator, and (ii) within 15 calendar days of any such minimum capital requirement or capital ratio changing.

As described above, pursuant to Addendum O (Admission of Non-U.S. Entities as Direct NSCC Members),[27] the current minimum capital requirements for a Member, Mutual Fund/Insurance Services Member, Fund Member or Insurance Carrier/Retirement Services Member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such member to have capital between 1½ to 7 times the otherwise-applicable capital requirement.

The multiplier was designed to account for the less transparent nature of accounting standards other than U.S. GAAP. However, accounting standards have converged over the years (namely International Financial Reporting Standards (''IFRS'') and U.S. GAAP).[28] As such, NSCC believes the multiplier is no longer necessary and its retirement would be a welcomed simplification for both NSCC and its members.

Accordingly, NSCC proposes to delete the language in Addendum O providing that the minimum capital requirements for a Member, Mutual Fund/Insurance Services Member, Fund Member or Insurance Carrier/Retirement Services Member that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such members to have capital between 1½ to 7 times the otherwise-applicable capital requirement. Instead, a Member, Mutual Fund/Insurance Services Member, Fund Member or Insurance Carrier/Retirement Services Member would be required to meet the minimum capital requirements provided in Addendum B for the applicable membership.

As described above, NSCC also proposes that non-U.S. banks be compliant with the minimum capital requirements and capital ratios in their home jurisdiction. Given the difficulty in knowing and monitoring compliance with various regulatory minimums for various jurisdictions, these Members would be required to provide NSCC with periodic attestations relating to the minimum capital requirements and capital ratios for their home jurisdiction.

NSCC also proposes to make some clarifying language changes to Addendum O to replace references to undefined capitalized terms and improve the accessibility of Addendum O, without substantive effect.

[25] *See* Basel Committee on Banking Supervision, Basel III Standards, *supra* note 5.

[26] *See id.*

[27] Addendum O applies to all entities that are organized in a country other than the U.S. and that are not otherwise subject to U.S. federal or state regulation (''non-U.S. entities''), other than insurance companies.

[28] The convergence between IFRS and U.S. GAAP began with the 2002 Norwalk Agreement. (*Available at https://www.ifrs.org/content/dam/ifrs/around-the-world/mous/norwalk-agreement-2002.pdf.*) Under that agreement, the Financial Accounting Standards Board (''FASB'') and the International Accounting Standards Board (''IASB'') signed a memorandum of understanding on the convergence of accounting standards. Between 2010 and 2013, FASB and IASB published several quarterly progress reports on their work to improve and achieve convergence of U.S. GAAP and IFRS. In 2013, the International Financial Reporting Standards Foundation established the Accounting Standards Advisory Forum (''ASAF'') to improve cooperation among worldwide standard setters and advise the IASB as it developed IFRS. (*See https://www.ifrs.org/groups/accounting-standards-advisory-forum/.*) FASB was selected as one of the ASAF's twelve members. FASB's membership on the ASAF helps represent U.S. interests in the IASB's standard-setting process and continues the process of improving and converging U.S. GAAP and IFRS. In February 2013, the Journal of Accountancy published its view of the success of the convergence project citing converged or partially converged standards, including business combinations, discontinued operations, fair value measurement, and share-base payments. (*Available at https://www.journalofaccountancy.com/issues/2013/feb/20126984.html.*) Subsequent to the publication, IASB and FASB converge on revenue recognition. While IASB and FASB have not achieved full convergence, NSCC believes the accounting rules are sufficiently aligned such that the multiplier is no longer required.

Other Types of Members

NSCC also proposes that (1) a Member that is (A) a national securities exchange registered under the Exchange Act and/or (B) a non-U.S. securities exchange or multilateral trading facility, must have and maintain at all times at least $100 million in equity capital, (2) a Member that is a broker-dealer that is acting as an Index Receipt Agent must have and maintain at all times minimum Excess Net Capital of $100 million, and (3) for a type of applicant or Member that is not otherwise addressed above, (A) such applicant or Member must maintain compliance with its home country regulator's minimum financial requirements at all times and (B) NSCC may, based on information provided by or concerning an applicant or Member, also assign minimum financial requirements to such applicant or Member based on how closely it resembles another membership type and its risk profile. Any such assigned minimum financial requirements would be promptly communicated to, and discussed with, the applicant or Member.

In the case of Index Receipt Agents, the higher capital requirement for this subset of Members is being proposed in order to reflect the systemic risk presented by the potential failure of an Index Receipt Agent. The failure of an Index Receipt Agent could present systemic risk because such failure could potentially result in disruptions at the exchange-traded funds (''ETFs'') for which the Index Receipt Agent acts. As a result of this systemic risk, Members acting as Index Receipt Agents require a moderately sized capital base to support this business function. Similarly, NSCC proposes to create a standard capital requirement for Members that are securities exchanges due to the systemic importance of these Members and the need to hold these Members to a consistent, high standard to ensure that they have sufficient capital to fulfill their systemically important role.

Limited Members

NSCC proposes that a Mutual Fund/Insurance Services Member, Fund Member or Settling Bank Only Member that is a U.S. bank or trust company that, in accordance with such entity's regulatory and/or statutory requirements, calculates a Tier 1 RBC Ratio must have at all times a Tier 1 RBC Ratio equal to or greater than the Tier 1 RBC Ratio that would be required for such entity to be Well Capitalized. As discussed above, NSCC proposes to have the definition of Well Capitalized expressly tied to the FDIC's definition of ''well capitalized'' to ensure that the proposed requirement that U.S. banks and trust companies be Well Capitalized will keep pace with future changes to banking regulators' regulatory capital requirements. Similarly, NSCC proposes to add a new defined term of ''Tier 1 RBC Ratio'' to Rule 1 in order to replace a reference to an undefined term in the Rules with its intended meaning. Under the proposal, Tier 1 RBC Ratio would be defined as the ratio of an entity's tier 1 capital to its total-risk weighted assets, calculated in accordance with such entity's regulatory and/or statutory requirements.

NSCC proposes to clarify existing language providing that a Mutual Fund/Insurance Services Member or Fund Member that is a U.S. trust company that does not calculate a Tier 1 RBC Ratio must have at least $2 million in equity capital, without substantive effect. Relatedly, NSCC proposes to revise the definition of ''RBC Ratio,'' which is used in the capital requirements for Mutual Fund/Insurance Services Members, Fund Members and Insurance Carrier/Retirement Services Members, in the list of defined terms in Rule 1 for clarity in order to replace a reference to an undefined capitalized term with its intended meaning and to remove unnecessary limitations on the types of entities and legal requirements to which the term RBC Ratio applies.

For a Limited Member that is a non-U.S. entity not described in the section of Addendum B that applies to such type of Limited Member, such entity would be required to satisfy such minimum standards of financial responsibility as determined in accordance with such section of Addendum B.

Other Proposed Changes to Addendum B

Introduction and General Changes

NSCC proposes to make it clear throughout Addendum B that following an applicant's admission to membership it is required to continue meeting the qualifications, financial responsibility, operational capability and business history requirements as applicable to its membership type.[29] Specifically, NSCC proposes to include references throughout Addendum B clarifying that such requirements apply to both applicants and members. NSCC also proposes to revise a sentence in the introduction and Sections 1.B, 2.B, 3.B and 4.B of Addendum B to correct language limited to applicant financial responsibility requirements.

NSCC also proposes to add the word ''requirements'' in one place in the introduction to improve readability.

NSCC proposes to clarify, without substantive effect, the existing language in Sections 2.B and 3.B of Addendum B that if a member is not of a type otherwise addressed in such section, it will be required to satisfy such minimum standards of financial responsibility as determined by NSCC. Any such assigned minimum financial requirements would be promptly communicated to, and discussed with, the member.

NSCC also proposes to add a sentence to the end of Sections 5.B and 6.B of Addendum B that any assigned minimum standards of financial responsibility for Municipal Comparison Only Members and Data Services Only Members, respectively, would be promptly communicated to, and discussed with, such members.

At the end of Sections 1.B, 2.B and 3.B of Addendum B, NSCC proposes to make explicit that, notwithstanding anything to the contrary in such section, an applicant or member must maintain compliance with its home country regulator's minimum financial requirements at all times.

Section 1

NSCC is proposing to revise the headings in Section 1.B referring to a Member's type of entity to read ''U.S. Broker-Dealers,'' ''U.S. Banks and Trust Companies,'' ''Non-U.S. Broker-Dealers and Banks,'' ''Securities Exchanges,'' ''Index Receipt Agents'' and ''Others,'' in conformity with the above-described changes to Member financial responsibility requirements.

Section 2

NSCC proposes to clarify and simplify the language describing the capital requirement for a Mutual Fund/Insurance Services Member that is a Registered Broker-Dealer or an Insurance Company, without substantive effect.

NSCC proposes to revise the heading ''Banks and trust companies'' in Section 2.B to read ''U.S. Banks and Trust Companies'' in conformity with the same change made in Section 1.B.

Section 3

NSCC proposes to clarify and simplify the language describing the capital requirement for a Fund Member that is a Registered Broker-Dealer, investment company, investment adviser or

[29] *See* Rule 2B (Ongoing Membership Requirements and Monitoring), Section 1 (Requirements), *supra* note 3.

Insurance Company, without substantive effect.

NSCC proposes to revise the heading ''Banks or trust companies'' in Section 3.B to read ''U.S. Banks and Trust Companies'' in conformity with the same changes made in Sections 1.B and 2.B.

Section 4

NSCC proposes to clarify and simplify the language describing the capital requirement for an Insurance Carrier/Retirement Services Member, without substantive effect.

Sections 5 through 12

As noted above, NSCC proposes to make it clear in Sections 5 through 12 of Addendum B that following an applicant's admission to membership it is required to continue meeting the qualifications, financial responsibility, operational capability and business history requirements as applicable to its membership type.

B. Changes to NSCC's Watch List and Enhanced Surveillance List

NSCC proposes to redefine the Watch List and eliminate the separate enhanced surveillance list and instead implement a new Watch List that consists of a relatively smaller group of members that pose heightened risk to NSCC and its members.

NSCC believes that the current system of having both a Watch List and an enhanced surveillance list (which include some of the same members) has confused various NSCC stakeholders, while the proposed approach, as NSCC understands from its experience, would be more consistent with industry practices and understanding of a ''Watch List.''

The new Watch List would include Members with a CRRM rating of 6 or 7, as well as members that are deemed by NSCC to pose a heightened risk to it and its members. The separate enhanced surveillance list would be merged into the new Watch List and references to the separate enhanced surveillance list would be deleted from the Rules.

In sum, the new Watch List would consist of members on the existing enhanced surveillance list, Members with a CRRM rating of 6 or 7, and any other members that are deemed by NSCC to pose a heightened risk to it and its members.

The proposed change will mean that Members with a CRRM rating of 5 would no longer automatically be included on the Watch List. Members with a CRRM rating of 5 represent the largest single CRRM rating category, but NSCC does not believe all such Members present heightened credit concerns.[30] Nevertheless, NSCC would continue to have the authority to place a Member on the new Watch List if it is deemed to pose a heightened risk to NSCC and its Members and/or to downgrade the CRRM rating of a Member.

NSCC also proposes to clarify in Section 4(f) of Rule 2B that members on the Watch List are reported to NSCC's management committees and regularly reviewed by NSCC's senior management.

C. Certain Other Clarification Changes

In connection with the above-described changes to the Rules to enhance NSCC's capital requirements for members and redefine the Watch List and eliminate the enhanced surveillance list, NSCC proposes to make certain other clarification changes in order to improve the accessibility and transparency of the Rules, as follows:

NSCC proposes to revise Section 4(g) of Rule 2B to clarify the relationship between NSCC and a parent bank holding company of a Member that has guaranteed the obligations of the Member in accordance with Addendum B, and to delete the unnecessary word ''affiliated'' when referring to a material banking subsidiary of such parent bank holding company.

NSCC proposes to clarify Rule 7, Section 4 [31] to state that a Member desiring to become an Index Receipt Agent shall first submit an application to be reviewed by NSCC.

NSCC also proposes to revise Section 1 of Rule 46 [32] to clarify the relationship between NSCC and a parent bank holding company of a Member that has guaranteed the obligations of the Member in accordance with Addendum B.

Member Outreach

Beginning in June 2019, NSCC conducted outreach to various Members in order to provide them with advance notice of the proposed enhancements to NSCC's capital requirements, the proposed redefinition of the Watch List, and the proposed elimination of the enhanced surveillance list. NSCC has been in communication with all Members whose current capital levels are either below the proposed minimum capital requirements or only slightly above the proposed requirements. Any such Members have been informed of the new requirement that would be in effect 12 months after approval of the proposed changes. Following approval, NSCC again would contact any Members that are either below or only slightly above the new minimum requirement to remind them of their new capital requirement and the 12-month grace period in which to come into compliance with the new requirement.

NSCC has received some written feedback from Members on the proposed enhancements to NSCC's capital requirements for certain Members, which are discussed in Item 4 below. The Commission will be notified of any additional written comments received.

NSCC has not conducted outreach to members providing them with advance notice of the proposed clarification changes to the Rules.

Implementation Timeframe

Pending Commission approval, NSCC would implement the proposed changes to enhance its capital requirements for members one year after the Commission's approval of this proposed rule change. During that one-year period, NSCC would periodically provide Members with estimates of their capital requirements, based on the approved changes, with more outreach expected for Members impacted by the changes. NSCC would inform a Member that is a U.S. broker-dealer (''BD Member'') if it exceeded its then-current VaR Tier, which may lead to the BD Member moving into a higher VaR Tier and, thus, being subject to a higher capital requirement. Same as the proposed, ongoing practice post-implementation, NSCC would provide the Member with a grace period of 60 days from the date of implementation to comply with the higher requirement.

The deferred implementation for all members and the estimated capital requirements for Members are designed to give members the opportunity to assess the impact of their enhanced capital requirements on their business profile and make any changes that they deem necessary to lower their capital requirement. All members would be advised of the implementation date of these proposed changes through issuance of an NSCC Important Notice,

[30] The majority of Members with a CRRM rating of 5 are either rated ''investment grade'' by external rating agencies or, in the absence of external ratings, NSCC believes are equivalent to investment grade, as many of these Members are primary dealers and large foreign banks. A firm with a rating of ''investment grade'' is understood to be better able to make its payment obligations compared to a firm with a lesser rating, such as a rating of ''speculative.'' As such, among the total population, firms with investment grade ratings are generally considered good credit risk along a credit risk scale.

[31] Rule 7 (Comparison and Trade Recording Operation), Section 4 (Index Receipt Agent), *supra* note 3.

[32] Rule 46 (Restrictions on Access to Services), Section 1, *supra* note 3.

posted to its website. NSCC also would inform firms applying for participation of the new capital requirements. Members and applicants should note that the methodology/processes used to set their initial capital requirements would be the same at implementation of the proposed changes as it would be on an ongoing basis.

NSCC expects to implement the proposed changes to redefine the Watch List and eliminate the enhanced surveillance list, as well as the clarification changes to the Rules, within 90 days of Commission approval. All members would be advised of such implementation through issuance of an NSCC Important Notice, posted to its website.

2. Statutory Basis

NSCC believes that the proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, NSCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Exchange Act [33] and Rules 17Ad–22(b)(7), (e)(4)(i), (e)(18) and (e)(19),[34] each as promulgated under the Exchange Act, for the reasons described below.

Section 17A(b)(3)(F) of the Exchange Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[35] As described above, the proposed rule changes would (1) enhance NSCC's capital requirements for members, (2) redefine the Watch List and eliminate the enhanced surveillance list, and (3) make clarification changes to the Rules. NSCC believes that enhancing its capital requirements for members, including continuing to recognize and account for varying Members and memberships, would help ensure that members maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at NSCC and otherwise, and would help NSCC more effectively manage and mitigate the credit risks posed by its members, which would in turn help NSCC be better able to withstand such credit risks and continue to meet its clearance and settlement obligations to its members. Similarly, NSCC believes that redefining the Watch List and eliminating the enhanced surveillance list, as described above, would help NSCC better allocate its resources for monitoring the credit risks posed by its members, which would in turn help NSCC more effectively manage and mitigate such credit risks so that NSCC is better able to withstand such credit risks and continue to meet its clearance and settlement obligations to its members. NSCC believes that making clarification changes to the Rules would help ensure that the Rules remain clear and accurate, which would in turn help facilitate members' understanding of the Rules and provide members with increased predictability and certainty regarding their rights and obligations with respect to NSCC's clearance and settlement activities. Therefore, NSCC believes that these proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Exchange Act.

Rule 17Ad–22(b)(7) under the Exchange Act requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains net capital equal to or greater than $50 million with the ability to obtain membership at NSCC, provided that NSCC may provide for a higher net capital requirement as a condition for membership if it demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures.[36] As described above, NSCC proposes to enhance its capital requirements for members. NSCC believes that these proposed rule changes, while referencing capital measures other than net capital, would help ensure that members maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at NSCC and otherwise, and would help NSCC more effectively manage and mitigate the credit risks posed by its members while providing fair and open access to membership at NSCC. NSCC believes that the proposed changes would utilize capital measures that are appropriately matched to the regulatory and other capital requirements applicable to the types of entities that apply for and have membership at NSCC, which would in turn help facilitate members' understanding of and compliance with NSCC's enhanced capital requirements. NSCC also believes that these other capital measures are more appropriate measures of the capital available to members to absorb losses arising out of their clearance and settlement activities at NSCC than simply net capital because a member's net capital alone may not be available to absorb losses arising out of such activities. Thus, relying on measures beyond net capital would help members more effectively understand and manage the resources available to mitigate the credit risks they pose to NSCC. In the case of those proposed rule changes that may require members such as U.S. banks and trust companies, non-U.S. banks, national securities exchanges, non-U.S. securities exchanges or multilateral trading facilities, or Index Receipt Agents to maintain capital greater than $50 million, NSCC believes that enhanced capital requirements for such members are necessary and appropriate in light of the regulatory and other capital requirements that such members face and the credit risks they pose to NSCC, which would help NSCC more effectively manage and mitigate such credit risks. Therefore, NSCC believes that the enhanced capital requirements for members are necessary to mitigate risks that could not otherwise be effectively managed by other measures, consistent with Rule 17Ad–22(b)(7) under the Exchange Act.

Rule 17Ad–22(e)(4)(i) under the Exchange 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.[37] As described above, NSCC proposes to enhance its capital requirements for members, redefine the Watch List, and eliminate the enhanced surveillance list. NSCC believes that enhancing its capital requirements for members would help ensure that members maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at NSCC and otherwise, which would in turn help NSCC more effectively manage and mitigate its credit exposures to its members and thereby help enhance the ability of NSCC's financial resources to cover fully NSCC's credit exposures to members with a high degree of confidence. NSCC believes that redefining the Watch List and eliminating the enhanced surveillance list would help NSCC better allocate its resources for monitoring its credit exposures to

[33] 15 U.S.C. 78q–1(b)(3)(F).

[34] 17 CFR 240.17Ad–22(b)(7), (e)(4)(i), (e)(18) and (e)(19).

[35] 15 U.S.C. 78q–1(b)(3)(F).

[36] 17 CFR 240.17Ad–22(b)(7).

[37] 17 CFR 240.17Ad–22(e)(4)(i).

members. By helping to better allocate resources, the proposal would in turn help NSCC more effectively manage and mitigate its credit exposures to its members, thereby helping to enhance the ability of NSCC's financial resources to cover fully NSCC's credit exposures to members with a high degree of confidence. Therefore, NSCC believes that its proposal to enhance its capital requirements for members, redefine the Watch List, and eliminate the enhanced surveillance list is consistent with Rule 17Ad–22(e)(4)(i) under the Exchange Act.

Rule 17Ad–22(e)(18) under the Exchange Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.[38] As described above, NSCC proposes to enhance its capital requirements for members, redefine the Watch List, and eliminate the enhanced surveillance list. NSCC's proposed capital requirements would utilize objective measurements of member capital that would be fully disclosed in the Rules. The proposed capital requirements also would be risk-based and allow for fair and open access in that they would be based on the credit risks imposed by the member, such as its membership type, type of entity (including whether it is a non-U.S. entity), whether it self-clears or clears for others, and its VaR Tier. Accordingly, NSCC's proposed capital requirements would establish objective, risk-based and publicly disclosed criteria for membership, which would permit fair and open access by members. The proposed capital requirements also would ensure that members maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at NSCC and otherwise, which would help ensure that they have sufficient financial resources to meet the obligations arising from their membership at NSCC. NSCC's proposed redefinition of the Watch List and the elimination of the enhanced surveillance list would help NSCC better allocate its resources for monitoring the credit risks posed by its members, including their ongoing compliance with NSCC's proposed enhancements to its capital requirements. Therefore, NSCC believes that its proposal to enhance its capital requirements for members, redefine the Watch List, and eliminate the enhanced surveillance list is consistent with Rule 17Ad–22(e)(18) under the Exchange Act.

Rule 17Ad–22(e)(19) under the Exchange Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to NSCC arising from arrangements in which firms that are indirect participants in NSCC rely on the services provided by direct participants to access NSCC's payment, clearing, or settlement facilities.[39] As described above, NSCC proposes to enhance its capital requirements for members, including U.S. broker-dealer Members that clear transactions for others. More specifically, the proposal would subject U.S. broker-dealer Members that clear transactions for others to heightened capital requirements versus U.S. broker-dealer Members that clear transactions only for themselves. NSCC believes that a broker-dealer Member that clears transactions for others (*i.e.,* a direct participant) can present additional risk because it could clear for a large number of correspondent clients (*i.e.,* indirect participants), which would expand the scope and volume of risk presented to NSCC and the direct participant itself when the indirect participant's trades are submitted to NSCC for settlement via the direct participant. The indirect nature of this risk exposure also increases risk to NSCC as there is generally less transparency into the indirect activity versus if the direct participant generated all of the activity itself. By requiring a U.S. broker-dealer Member that clears transactions for others to be subject to heightened capital requirements versus a U.S. broker-dealer Member that clears transactions only for itself, the proposal would help ensure that NSCC is able to better manage the material risks to NSCC arising from arrangements in which a Member clears transactions for others through NSCC. Therefore, NSCC believes that its proposal to enhance its capital requirements for members is consistent with Rule 17Ad–22(e)(19) under the Exchange Act.

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

NSCC believes that the proposed rule change to enhance its capital requirements for BD Members could have an impact upon competition because some BD Members could be required to maintain capital in excess of their current capital levels. That impact could impose a burden on competition on some of those BD Members because they may bear higher costs to raise capital in order to comply with the enhanced capital requirements.

Consistent with that belief, NSCC received three written comments from three BD Members arguing that the proposed enhancements to the capital requirements for BD Members (''Proposed BD Requirements'') could negatively affect smaller BD Members.[40]

Two of the commenters argue that the Proposed BD Requirements will unfairly discriminate against small BD Members in favor of the largest BD Members,[41] with one of the commenters further arguing that mid-sized BD Member firms also will be discriminated against.[42] Similarly, a third commenter argues that, in addition to affecting small BD Members, the Proposed BD Requirements will drastically affect other industry participants and small companies that do business with and that rely on such BD Members to raise capital.[43]

Two of the commenters argue that the Proposed BD Requirements will create barriers to entry.[44] Moreover, one of those commenters argues that the barriers to entry will cause further industry consolidation,[45] while the other argues that the barriers are anticompetitive and, when considered with the argued effect on smaller broker-dealers, at odds with the goals of the Exchange Act.[46]

Regarding the proposed VaR Tiers for BD Members, one commenter suggests that the proposed tiering scale should

[38] 17 CFR 240.17Ad–22(e)(18).

[39] 17 CFR 240.17Ad–22(e)(19).

[40] Letter from Bonnie K. Wachtel, Chief Executive Officer, and Wendie L. Wachtel, Chief Operating Officer, Wachtel & Co., Inc. (September 16, 2019) (''Wachtel Letter''); Email from Samuel F. Lek, Lek Securities Corporation (September 17, 2019) (''Lek Email''); Email from William L. Walker, Chief Operating Officer, Wilson-Davis & Co., Inc. (October 31, 2019) (''Wilson-Davis Email''). Copies of the comments received have been included as Exhibit 2 to the filing, pursuant to the requirements of Form 19b–4 and the General Instructions for Form 19b–4, *available at https://www.sec.gov/about/forms/form19b-4.pdf.*

[41] Wachtel Letter, *supra* note 40; Lek Email, *supra* note 40.

[42] Wachtel Letter, *supra* note 40.

[43] Wilson-Davis Email, *supra* note 40.

[44] Wachtel Letter, *supra* note 40; Lek Email, *supra* note 40.

[45] Wachtel Letter, *supra* note 40.

[46] Lek Email, *supra* note 40.

not end at $5 million Excess Net Capital for a self-clearing BD Member with a daily volatility component of more than $500,000 for its Net Unsettled Positions; rather, the scale should continue indefinitely.[47] Meanwhile, another commenter suggests that the proposed $10 million in Excess Net Capital for a BD Member that clears for others is not necessary to address the risk presented by such BD Member because its required margin will be greater than $500,000 for its Net Unsettled Positions.[48] That same commenter also argues that the VaR Tiers are extremely low, which is an effort to target smaller BD Members and ignores the greater risk presented by larger BD Members.[49]

NSCC values each of its BD Members and does not wish to create a competitive burden on any of them or any of their clients. The Proposed BD Requirements were not designed to discriminate against any BD Members (small, medium, or large), create a barrier to NSCC membership, or force any BD Member to clear through another financial institution or exit the business completely. Rather, as discussed above and below, the Proposed BD Requirements were designed and tailored to help address the specific risks presented by BD Members within the current industry environment.

Nevertheless, NSCC fully appreciates that the Proposed BD Requirements may result in a burden on competition for some BD Members that would need to raise or keep more capital on hand in order to comply with the new requirements, although NSCC does not believe that any such burden on competition would be significant. In any event, to the extent the Proposed BD Requirements would be a burden on competition, NSCC believes that the burden would be necessary and appropriate in furtherance of the purposes of the Exchange Act, as permitted by Section 17A(b)(3)(I) thereunder.[50]

NSCC believes the Proposed BD Requirements are necessary because, in short, the current requirements are outdated. As noted above, the current minimum capital requirements for members have not been adjusted in over 20 years. Meanwhile, there have been significant changes to the industry (*e.g.,* market structure, technology, and regulatory environment) within which NSCC and all its members operate, exposing NSCC and its members to more and different risks than 20 years ago.

There also have been significant membership changes over the past 20 years. Numerous mergers, acquisitions, and new market entrants have created a diverse NSCC membership that has expanded the credit-risk profiles that NSCC must manage. For example, NSCC has seen an increase in less capitalized market participants focusing on niche parts of the market with innovative new business models.

Additionally, as mentioned above, trading activity and market volatility, each of which present risk to NSCC, ballooned over the years.[51] While NSCC does collect margin from its members to help address these types of risk, it is imperative that NSCC ensure that its members have sufficient capital to sustain unexpected and/or sustained increases in margin requirements. Although the above factors do not directly require NSCC to increase capital requirements for its membership (*e.g.,* there is no specific regulation or formula that prescribes a set capital requirement for members of a CCP such as NSCC), the overarching and collective focus of the regulatory changes noted above, in light of the many heightened risks to the financial industry, has been to increase the stability of the financial markets in order to reduce systemic risk. As a self-regulatory organization, a SIFMU, and being exposed to the new and increased risks over the past 20 years, NSCC has a responsibility to do the same. Enhancing its capital requirements helps meet that responsibility and improve NSCC's credit risk management.

Moreover, stress testing has also highlighted that BD Members with smaller capital bases are exposed to the risk of losses exceeding their current Excess Net Capital requirements under a stressed scenario.[52] There also has been heightened focus on legal, operational, and cyber risk, given the devastating impact that they could have today. In the case of legal risk, members can and do face legal exposures that exceed their required Excess Net Capital.[53] In the case of operational risk, unexpected operational events could expose NSCC to an amount in excess of a firm's required Excess Net Capital. In the case of cyber risk, cyber-attacks have the potential to inflict significant losses that could exceed the current minimum capital requirements.

Appreciation of these greater risks have manifested into new regulatory requirements for certain industry participants,[54] including NSCC, requiring NSCC to maintain greater capital amounts and deploy enhanced risk management tools.[55] As to which BD Members are arguably ''riskier'' in today's environment, NSCC's internal stress testing analysis [56] highlights that BD Members with smaller capital bases are more likely to experience a loss that would exceed their current Excess Net Capital requirements,[57] countering the commenter's argument that larger BD Members are riskier.[58]

Therefore, NSCC believes the Proposed BD Requirements are necessary in furtherance of the purposes of the Exchange Act, as permitted by Section 17A(b)(3)(I) thereunder,[59] as the proposed changes would help ensure that all BD Members maintain an amount of capital that is more commensurate with the current industry environment and the risks it presents.

NSCC believes the Proposed BD Requirements are appropriate for a variety of reasons. First, the new requirements are tailored to better reflect the volatility risk presented by BD Members. Currently, the minimum capital requirement for BD Members is simply an amount of Excess Net Capital based on membership type (*i.e.,* a $500,000 Excess Net Capital requirement for those that self-clear and a $1 million Excess Net Capital requirement for those that clear for others), without considering any other risks. As described above, NSCC would not only continue to consider membership type, but it also proposes to use the daily volatility component of the BD Member's own Net Unsettled Positions (*i.e.,* a measurement of the risk that the BD Member's Net Unsettled Positions present to NSCC) in order to more strategically group BD Members into tiers, with each tier being assigned a specific minimum capital requirement. BD Members in a greater tier would need to maintain higher capital requirements than those in a

[47] Wachtel Letter, *supra* note 40.

[48] Lek Email, *supra* note 40.

[49] *Id.*

[50] 15 U.S.C. 78q–1(b)(3)(I).

[51] *See supra* note 9.

[52] *See* Stress Testing Analysis, included as a Confidential Exhibit 3 to the filing.

[53] *See Commission* v. *Alpine Sec. Corp.,* 982 F.3d 68 (2d Cir. 2020) (upholding $12 million civil penalty against clearing broker-dealer).

[54] *See, e.g.,* Basel Committee on Banking Supervision, Basel III Standards, *supra* note 5; Financial Stability Board, 2020 list of G–SIBs, *supra* note 4; U.S. Department of the Treasury, Designations, Financial Market Utility Designations, *supra* note 7.

[55] *See, e.g.,* CCAS, *supra* note 10.

[56] *See supra* note 52.

[57] *See* Letter from Daniel McElligott, Executive Director, DTCC, to Regional Firms Council (October 24, 2019), included as a Confidential Exhibit 3 to the filing.

[58] Lek Email, *supra* note 40.

[59] 15 U.S.C. 78q–1(b)(3)(I).

lesser tier, commensurate with the volatility risks that the BD Members in each tier present to NSCC. As described above, BD Members could move between tiers based on sustained changes to their daily volatility component, thus allowing BD Members to have control over the tier in which they are placed and, in turn, the capital they need to maintain. NSCC would track VaR breaches for BD Members on a daily basis. On the first instance of breaching a VaR Tier, NSCC would send a letter to the Member informing it of the VaR breach and reminding it that four subsequent breaches within the next 12 months would result in a higher capital requirement. On the fifth instance of breaching a VaR Tier, NSCC would again send a letter to a Member informing it of the fifth breach and that the new, higher capital requirement would take effect in 60 days and would remain in effect for at least the next 12 months.

In the case of new applicants for NSCC membership, as described above, if the Proposed BD Requirements had been in effect for the past two years, but newly admitted BD Members were not automatically placed in at least the middle VaR Tier, only one BD Member would have belonged in the lowest VaR Tier at admittance, and that firm would have moved to the middle VaR Tier in its second month of membership.[60] As a result, requiring new BD Members to be placed in at least the middle VaR Tier at admittance would not pose an unnecessary barrier to entry that such BD Members would not have had to meet eventually anyway.

In response to specific comments that the VaR Tiers begin at too low of a level and that they should continue indefinitely,[61] NSCC designed the tier levels to not only consider the volatility risk that the BD Members present to NSCC but also to make the tiers easy to understand and manage. NSCC believes that adding more tiers at the upper levels, or splitting existing tiers, would complicate the structure unnecessarily and make the logistics in tracking each BD Member as they moved between tiers unwieldy, not only for NSCC but also for the BD Member itself. NSCC believes the proposed tier structure strikes the right balance between benefit and functionality.

Second, while NSCC believes members must understand the risks that their capitalization presents to NSCC and be prepared to monitor their capitalization and alter their behavior in order to minimize that risk, as necessary, NSCC also appreciates and understands that members must be able to plan for their capital requirements. That is why NSCC would not implement the proposed changes to any of the enhanced capital requirements until one year after the Commission's approval of the proposal. During that one-year period, NSCC would periodically provide Members with estimates of their capital requirements. The deferred implementation for all members and the estimated capital requirements for Members are designed to give members the opportunity to assess the impact of their enhanced capital requirements on their business profile and make any changes that they deem necessary.

Third, in response to the specific comment that the Proposed BD Requirements are at odds with the goals of the Exchange Act,[62] NSCC believes the proposed changes are, in fact, consistent with and would improve upon NSCC's compliance with applicable regulatory requirements, as discussed above, including Section 17A(b)(3)(F) of the Exchange Act and Rules 17Ad–22(b)(7), (e)(4)(i), (e)(18) and (e)(19) promulgated thereunder.

Finally, NSCC believes that the Proposed BD Requirements would better align NSCC's capital requirements for members with those of other CCPs, both in the U.S. and abroad.[63]

Therefore, NSCC believes the Proposed BD Requirements are appropriate in furtherance of the purposes of the Exchange Act, as permitted by Section 17A(b)(3)(I) thereunder,[64] as the proposed changes are purposely tailored and structured, provide for a one-year implementation period, are consistent with applicable provisions of the Exchange Act and rules thereunder, and better align with NSCC peers.

NSCC does not believe the proposed changes to enhance the capital requirements for its other members would impact competition because such members already meet the proposed requirements. Additionally, NSCC does not believe that the proposed changes to (i) redefine the Watch List and eliminate the enhanced surveillance list and (ii) make clarification changes to the Rules would impact competition. Redefining the Watch List and eliminating the enhanced surveillance list are simply intended to streamline and clarify these monitoring practices. If anything, by no longer automatically including Members with a CRRM rating of 5 on the Watch List, as proposed, the change could promote competition for such Members, as such Members would no longer automatically be subject to increased scrutiny by NSCC, including the possibility of increased financial and reporting obligations. Meanwhile, making clarification changes to the Rules to ensure that they remain accessible and transparent would help facilitate members' understanding of the Rules and provide members with increased predictability and certainty regarding their rights and obligations with respect to NSCC's clearance and settlement activities.

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

All written comments received by NSCC have been summarized and responded to in Item 4 (Self-Regulatory Organization's Statement on Burden on Competition) above. If any additional written comments are received, NSCC will amend this filing to publicly file such comments as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting written 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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which

[60] *See supra* note 21.

[61] Lek Email, *supra* note 40; Wachtel Letter, *supra* note 40.

[62] Lek Email, *supra* note 40.

[63] *See supra* note 10.

[64] 15 U.S.C. 78q–1(b)(3)(I).

the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2021–016 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NSCC–2021–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 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 (*https://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2021–016 and should be submitted on or before January 19, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[65]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–28250 Filed 12–28–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93862; File No. SR–NYSE–2021–76]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend the NYSE Listed Company Manual To Amend Certain of Its Listing and Annual Fees

December 22, 2021.

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 December 20, 2021, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 902.02, 902.03 and 902.11 of the NYSE Listed Company Manual (the ''Manual'') to amend certain of its listing fees. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain of its listing fees set forth in Chapter 9 of the Manual. Changes to initial listing fees will take effect immediately and changes to annual fees will take effect from the beginning of the calendar year commencing on January 1, 2022. The proposed amendments only reflect changes in the amounts charged for the initial listing of securities and on an annual basis thereafter and do not reflect any change in the services provided to the issuer in connection with such listing.

Currently, when an issuer first lists a class of common shares (*i.e.,* when an issuer lists a class of common shares and has no other class of common shares listed on the Exchange at the time of such listing), the Exchange charges listing fees for such class at a rate of $0.004 per share, subject to a minimum and maximum fee of $150,000 and $295,000, respectively. The Exchange also charges a one-time special fee of $50,000 which is included in the minimum and maximum fee. The Exchange proposes to replace the per share fee with a flat fee of $295,000 when an issuer first lists a class of common shares and eliminate the special one-time charge and minimum and maximum fee levels. The Exchange proposes to make conforming changes throughout Sections 902.02 and 902.03 of the Manual to eliminate references to the special one-time charge and the minimum and maximum listing fees. As the one-time charge is currently included in the maximum initial listing fee of $295,000 and all companies will be paying the maximum fee as a flat fee going forward, the Exchange is proposing to eliminate the one-time charge.[4] The Exchange also proposes to: (i) Revise the rules in several places to

---

[65] 17 CFR 200.30–3(a)(12).

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The first time an issuer lists an Equity Investment Tracking Stock (as defined in Section 102.07) that is the issuer's only class of common equity securities listed on the Exchange, the fee is a fixed amount of $100,000, which amount includes the special charge of $50,000. The proposed amendment would remove the reference to the inclusion of the $50,000 special charge from the fee provision in relation to Equity Investment Tracking Stocks, as a separate fee for those securities and the concept will no longer exist elsewhere in the rules.