

## SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 11027/ February 8, 2022; Securities Exchange Act of 1934 Release No. 94187/February 8, 2022]

### Order Regarding Review of FASB Accounting Support Fee for 2022 Under Section 109 of the Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 (“SOX” or the “Act”) provides that the Securities and Exchange Commission (the “Commission”) may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard-setting body that meets certain criteria.<sup>1</sup> Section 109 of SOX provides that all of the budget of such a standard-setting body shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard-setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under Section 109(f) of the Act, the amount of fees collected for a fiscal year shall not exceed the “recoverable budget expenses” of the standard-setting body. Section 109(i) of SOX amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board (“FASB”) and its parent organization, the Financial Accounting Foundation (“FAF”), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB’s financial accounting and reporting standards as “generally accepted” under Section 108 of the Act.<sup>2</sup> Accordingly, the Commission undertook a review of the FASB’s accounting support fee for calendar year 2022.<sup>3</sup> In connection with its review, the Commission also reviewed the budget for the FAF and the FASB for calendar year 2022.

Section 109 of SOX provides that, in addition to the accounting support fee,

the standard-setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB, and the Governmental Accounting Standards Board (“GASB”), the FASB’s sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB, nor the GASB accept contributions from the accounting profession.

The Commission understands that the Office of Management and Budget (“OMB”) has determined the FASB’s spending of the 2022 accounting support fee is sequestrable under the Budget Control Act of 2011.<sup>4</sup> So long as sequestration is applicable, we anticipate that the FAF will work with the Commission and Commission staff as appropriate regarding its implementation of sequestration.

After its review, the Commission determined that the 2022 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

*It is ordered*, pursuant to Section 109 of SOX, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

**Vanessa A. Countryman,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94168; File No. SR-NSCC-2021-010]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Establish the Securities Financing Transaction Clearing Service and Make Other Changes

February 7, 2022.

On July 22, 2021, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-NSCC-2021-010 (“Proposed Rule Change”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The Proposed Rule Change was published for comment in the **Federal Register** on August 12, 2021.<sup>3</sup> The Commission received comment letters on the Proposed Rule Change.<sup>4</sup>

On September 2, 2021, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.<sup>6</sup> On November 5, 2021, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act,<sup>7</sup> to determine whether to approve or disapprove the

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

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

<sup>3</sup> Securities Exchange Act Release No. 92570 (August 5, 2021), 86 FR 44482 (August 12, 2021) (SR-NSCC-2021-010) (“Notice”). NSCC also filed the proposal contained in the Proposed Rule Change as advance notice SR-NSCC-2021-803 (“Advance Notice”) with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”). 12 U.S.C. 5465(e)(1); 17 CFR 240.19b-4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on August 12, 2021. Securities Exchange Act Release No. 92568 (August 5, 2021), 86 FR 44530 (August 12, 2021) (SR-NSCC-2021-803). The proposal contained in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

<sup>4</sup> Comment letters are available at <https://www.sec.gov/comments/sr-nsc-2021-010/srnscc2021010.htm>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> Securities Exchange Act Release No. 92860 (September 2, 2021), 86 Fed. Reg. 50569 (September 9, 2021) (SR-NSCC-2021-010).

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>1</sup> See 15 U.S.C. 7201 *et seq.*

<sup>2</sup> See Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter, Release No. 33-8221 (April 25, 2003) [68 FR 23333 (May 1, 2003)].

<sup>3</sup> The Financial Accounting Foundation’s Board of Trustees approved the FASB’s budget on November 16, 2021. The FAF submitted the approved budget to the Commission on November 22, 2021.

<sup>4</sup> See OMB Report Pursuant to the Sequestration Transparency Act of 2012, available at [https://www.whitehouse.gov/wp-content/uploads/2020/02/JC-sequestration\\_report\\_FY21\\_2-10-20.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/02/JC-sequestration_report_FY21_2-10-20.pdf). The sequestration percentages calculated for FY 2021 will be applied in each of the fiscal years from 2022 to 2029.