SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82544; File No. SR-NSCC-2017-019)

January 19, 2018

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change to Enhance the Process for Submitting and Accepting ETF Creations and Redemptions

On November 28, 2017, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2017-019, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder.[2] The proposed rule change was published for comment in the Federal Register on December 7, 2017.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission approves the proposed rule change.

I. Description of the Proposed Rule Change

This proposed rule change would modify NSCC's Rules & Procedures ("Rules")[4] to add two new time frames during which exchange traded fund ("ETF") agents may submit creation and redemption instructions, including as-of instructions, reversals, and corrections ("ETF Instructions")[5] to NSCC on behalf of ETF sponsors and ETF

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 82193 (December 1, 2017), 82 FR 57791 (December 7, 2017) (SR-NSCC-2017-019) ("Notice").

4 Available at http://www.dtcc.com/en/legal/rules-and-procedures.

5 An as-of instruction is an instruction that is submitted with a trade date as of an earlier date. As-of reversal instructions and as-of corrections are types of as-of

authorized participants.[6] The existing time frame during which ETF agents can submit ETF Instructions to NSCC extends from 2:00 p.m. to 8:00 p.m. (the "Primary Cycle").[7] The two proposed time frames would extend from 12:30 a.m. to 2:00 p.m. (the "Intraday Cycle") and from 9:00 p.m. to 11:30 p.m. (the "Supplemental Cycle").[8]

The two proposed cycles would enable ETF agents to submit ETF Instructions to NSCC later in the day, or earlier on the following day than currently possible, in order to make corrections to prior submissions.[9] The ability to make such new submission would help to avoid a situation where the NSCC member ("Member") would need to post margin[10] to cover exposures from the prior erroneous submission.[11] Specifically, the

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instructions. An as-of reversal instruction is an instruction that is submitted with a trade date as of an earlier date that reverses an instruction that was already processed by NSCC. Reversals and corrections are submitted on the same business day as the incorrect instruction, whereas as-of reversal instructions and as-of correction instructions are submitted on a business day after the date on which the incorrect instruction was submitted (but they would have the same trade date as the incorrect instruction). Notice, 82 FR at 57792.

6 ETF sponsors are issuers of ETFs. ETF authorized participants are (1) broker/dealers that have authorized participant agreements with ETF sponsors, and/or (2) broker/dealers that are NSCC members with an established ETF trading relationship with an ETF agent that is representing the ETF. See Rule 2, supra note 4.

7 All times referenced herein are Eastern Standard Time.

8 Notice, 82 FR at 57792-94.

9 Id. at 57793.

10 Rules, supra note 4. One way that NSCC mitigates its risk exposure to its Members is through a number of risk-based component charges (such as margin) that are calculated and assessed on Members daily. Each of the component charges collectively constitutes a Member's daily required deposit ("Required Deposit"). The objective of the Required Deposit is to mitigate potential losses to NSCC associated with liquidation of the Member's portfolio in the event that NSCC ceases to act for a Member (hereinafter referred to as a "Default"). The

proposed Intraday Cycle would enable NSCC to receive, on an intraday basis, (1) ETF Instructions that are marked as-of a prior trade date,[12] and (2) ETF Instructions for same-day settlement until the designated cut-off time of 11:30 a.m.[13] Meanwhile, the proposed Supplemental Cycle would enable ETF agents to submit ETF Instructions later than the Primary Cycle cut-off of 8:00 p.m.[14]

In connection with the two proposed cycles, NSCC also proposes to revise the standardized input files, which are submitted by ETF agents to NSCC, and the output files, which are sent by NSCC to ETF agents and ETF authorized participants, to include additional information, such as a reversal/correction indicator and transaction time.[15]

NSCC also proposes an "automated threshold value reasonability check." This check would hold any ETF Instructions in a "pending" status if such instructions exceed certain thresholds established by NSCC when compared to the most recent closing price.[16]

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aggregate of all Members' Required Deposits constitutes the Clearing Fund, which NSCC would be able to access should a defaulting Member's own Required Deposit be insufficient to satisfy losses to NSCC caused by the liquidation of that Member's portfolio.

11 Notice, 82 FR at 57793.

12 Id.

13 Id.

14 Id. at 57792.

15 Id. at 57794.

16 Id. at 57795-96.

Finally, NSCC proposes a technical correction to the Rules to clarify that next-day settling ETF Instructions are no longer processed differently than other ETF Instructions when submitted to NSCC.[17]

A. Current ETF Submission Processes

According to NSCC, ETF sponsors have processes outside of NSCC that allow the sponsors to create or redeem ETF shares with ETF authorized participants intraday. The details of the creations or redemptions are then recorded by ETF agents.[18] The processes conducted outside of NSCC are not uniformly automated and may involve manual data entry that the ETF agent eventually submits to NSCC using the standardized ETF create-and-redeem input file.[19]

Currently, the Primary Cycle is the only time in which ETF agents can submit the input file to NSCC.[20] However, according to NSCC, a risk exists that the manually entered data may contain errors that could result in incorrectly valued transactions.[21] NSCC states that any errors in the manually entered data contained in the input file may result in NSCC recording ETF Instructions that may be materially different than the value upon which the ETF sponsor and ETF authorized participant agreed.[22] Nevertheless,

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17 Id. at 57794-95.

18 Id. at 57791.

19 Id.

20 Id. at 57792.

21 Id. at 57791-92.

22 Id. at 57792.

NSCC uses that information when calculating both the ETF agent's and the ETF authorized participant's daily Required Deposit.[23] If the input file contained incorrect information, then the applicable Member's Required Deposit may reflect the error.[24] ETF agents currently do not have an opportunity to submit correcting ETF Instructions to NSCC until the next Primary Cycle, which is after the deadline for Members to satisfy their Required Deposit.[25]

B. Proposed New Cycles

NSCC proposes to add two new cycles during which ETF agents may submit ETF Instructions to NSCC: the Intraday Cycle and the Supplemental Cycle.[26] These proposed cycles would enable ETF agents to submit (1) creation and redemption instructions that would either reverse or correct creation and redemption instructions previously processed by NSCC that day (i.e., reversals and corrections), or (2) as-of instructions (e.g., as-of reversal instructions and as-of correction instructions) intended to correct as-of instructions processed by NSCC on an earlier day. In either case, ETF agents would have an opportunity to submit the applicable ETF Instruction prior to the 10:00 a.m. deadline for satisfying any Required Deposit.[27]

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[23] Id.

[24] Id.

[25] Id.

[26] Id. at 57792-94.

[27] Id. at 57797.

NSCC would continue to maintain its current deadline of 8:00 p.m. for the submission of the input files during the Primary Cycle on trade date (“T”).[28] Any late ETF Instructions that are submitted to NSCC between 8:00 p.m. and 9:00 p.m. would be held until 9:00 p.m. and then processed at 9:00 p.m. during the Supplemental Cycle.[29] The Supplemental Cycle would remove the need for manual extensions to the existing deadline of 8:00 p.m. for the Primary Cycle because ETF Instructions received by NSCC after 8:00 p.m. would be held and processed during the Supplemental Cycle, which would begin at 9:00 p.m.[30]

The proposed Intraday Cycle would enable NSCC to receive, on an intraday basis, ETF Instructions that are marked as-of a prior trade date.[31] Furthermore, ETF agents would be able to submit ETF Instructions (corrections or otherwise) to NSCC for same-day settlement during the Intraday Cycle until the designated cut-off time of 11:30 a.m.[32] However, ETF agents would not be able to submit ETF Instructions to NSCC for same-

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28 NSCC states that maintaining the current 8:00 p.m. deadline will help ensure that the existing end of day reconciliation processes conducted by ETF agents and ETF authorized participants continue to be conducted timely, and will also help prevent unnecessary delays to the end of day reconciliation processes. Id. at 57793.

29 Id.

30 Id.

31 Id.

32 The cut-off time of 11:30 a.m. would align the deadline for same-day settling creation and redemption instructions with the 11:30 a.m. deadline for other same-day settling non-ETF activity. For example, same-day settling corporate bond trades and transactions in municipal securities are subject to the 11:30 a.m. deadline. NSCC believes aligning these deadlines would streamline the processing of same-day settling items for NSCC and its Members. Id.

day settlement during the Primary Cycle because NSCC lacks the functionality to process such same-day transactions.[33] Upon implementation of the two proposed cycles, NSCC would be able to receive ETF Instructions in the standardized input file from 12:30 a.m. to 11:30 p.m. each business day.[34]

According to NSCC, ETF agents currently submit ETF Instructions to NSCC using a standardized electronic input file.[35] NSCC states that adding the Intraday Cycle and Supplemental Cycle would require some coding changes to the existing standardized input file and the output files distributed by NSCC to ETF agents and ETF authorized participants.[36] Specifically, NSCC proposes to add additional information to the input file, such as the reversal/correction indicator and transaction time.[37] NSCC would also revise the format of the input file to accommodate the additional information.[38]

As a result of these changes, ETF agents, ETF sponsors, and any third party service providers they may use would be required to make coding changes to their systems to submit the standardized input file during any of the cycles.[39] Although ETF

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33 NSCC would reject ETF Instructions submitted for same-day settlement during the Primary Cycle instead of assigning such ETF Instructions a new settlement date. Id. Currently, ETF agents are able to settle same-day transactions outside of NSCC, and this proposal would preserve that ability. Id.

34 Id.

35 Id. at 57792-94.

36 Id. at 57793-94.

37 Id. at 57792-94.

38 Id. at 57793-94.

39 Id.

agents would not be required to submit input files during all of the cycles, they would still be required to make coding changes to their systems because one standardized input file would be submitted to NSCC.[40] The additional information that would be included in the output files, such as the reversal/correction indicator and transaction time, would either be appended to the output files or would appear in fields in the output files that are currently reserved and do not contain any information.[41]

ETF agents would be responsible for communicating these changes to their clients (i.e., ETF sponsors) or any third party service providers that they utilize.[42] NSCC would continue to distribute all existing output files during the Primary Cycle and would also distribute output files during the two proposed cycles.[43]

C. Automated Threshold Value Reasonability Check

NSCC proposes an "automated threshold value reasonability check" that would hold in a "pending" status certain potentially mis-valued ETF Instructions (whether due to mistakes in manual entry or otherwise) that exceed certain thresholds established by NSCC.[44]

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40 Id.

41 Id. at 57794.

42 Id.

43 Id.

44 Id. at 57795-96.

The automated threshold value reasonability check would apply to all submissions of ETF Instructions.[45] NSCC would perform automated threshold value reasonability checks using the most recently available closing price from the primary listing marketplace compared to the per-share value for every individual ETF Instruction submitted.[46] NSCC would mark and assign a pended status to an ETF Instruction in which the per-share values exceed established thresholds compared to the most recently available closing price.[47] NSCC would automatically notify the ETF agent of a pended ETF Instruction via e-mail and through the output files.[48] NSCC would also notify NSCC's internal operations of the pended ETF Instruction.[49] The ETF Instruction would remain in a pended status while awaiting confirmation for reinstatement (or rejection) by the submitting ETF agent.[50]

A submitting ETF agent could authorize NSCC to process a pended ETF Instruction by affirmatively confirming the ETF Instruction.[51] The ETF Instruction would then be processed as long as NSCC received the confirmation by the end of the

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45 Id.

46 Id.

47 Id.

48 Id.

49 Id.

50 Id.

51 Id.

Supplemental Cycle.[52] If the submitting ETF agent does not respond by the specified time or responds that the ETF Instruction should be rejected, then NSCC would reject the ETF Instruction.[53]

NSCC proposes to establish the following threshold values initially:

- for ETFs with a Current Market Price equal to or greater than $3.00: the ETF contract value (i.e., the calculated effective price per share) is greater than or equal to a 98 percent variance from the market closing price from the trade date provided on the order; and
- for ETFs with a Current Market Price less than $3.00: the ETF contract value (i.e., the calculated effective price per share) is greater than or equal to a 98 percent variance from the market closing price from the trade date provided on the order.[54]

NSCC believes that setting the initial threshold value at 98 percent would capture overvalued and undervalued ETF Instructions while not being an excessively narrow control.[55] NSCC would retain the flexibility and discretion to adjust the price range and the threshold values described above.[56] NSCC may consider market conditions and

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52 Id.

53 Id.

54 Id. at 57796.

55 Id.

56 Id.

feedback from Members and internal NSCC stakeholders (i.e., product management, risk management, and operations management) when considering threshold adjustments.[57]

NSCC believes that threshold adjustments might be warranted under specific scenarios: (1) if requested by Members and/or internal NSCC stakeholders, or (2) in response to a future market event.[58] In the first scenario, NSCC could make threshold adjustments upon the request of Members and/or internal NSCC stakeholders to set thresholds closer to an ETF's closing market price than the initial setting.[59] Such threshold adjustments may prevent unnecessary reversals and margining on orders that contain errors because the threshold check would be triggered at smaller value differences.[60] Internal NSCC stakeholders would discuss the necessity of a threshold adjustment, with the final decision left to NSCC product management.[61]

In the second scenario, NSCC could make threshold adjustments in response to a future market event that results in a significant number of ETFs trading at market prices below the initial price range setting of $3.00.[62] NSCC would notify Members of any

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57 Id.

58 Id.

59 Id.

60 Id.

61 Id.

62 Id.

adjustment via Important Notice.[63] NSCC expects that changes to either setting would be rare.[64]

D. Technical Correction

NSCC proposes to make a technical correction to clarify how NSCC processes next-day settling instructions.[65] Since implementation of NSCC's accelerated trade guaranty,[66] NSCC no longer processes next-day settling instructions differently than other instructions when submitted to NSCC.[67] As such, next-day settling index receipts (with a Settlement Date of T+1) are no longer treated differently than regular-way instructions (i.e., those with a Settlement Date of T+2).[68] The proposed correction would remove repetitive language regarding such instructions.[69]

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63 Id.

64 Id.

65 Id. at 57794-95.

66 See Securities Exchange Act Release No. 79598 (December 19, 2016), 81 FR 94462 (December 23, 2016) (SR-NSCC-2016-005). NSCC's accelerated trade guaranty, among other things, accelerated NSCC's trade guaranty from midnight of trade date plus one day ("T+1") to the point of trade comparison and validation for bilateral submissions or to the point of trade validation for locked-in submissions.

67 Id.

68 Id.

69 Notice, 82 FR at 57794-95.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[70] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission believes the proposal is consistent with Act, specifically Section 17A(b)(3)(F) of the Act and Rules 17Ad-22(e)(6) and (21) under the Act.[71]

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[72] As discussed above, under NSCC's current processes, ETF agents may submit ETF Instructions to NSCC only during the Primary Cycle. Therefore, in the event that an ETF Instruction was incorrectly entered, the ETF agent must wait until the Primary Cycle on the following day to submit a new ETF Instruction to correct the error. In the meantime, the erroneous instruction might affect the amount of an ETF agent's and/or the ETF authorized participant's Required Deposit. This situation occurs because Required Deposits are updated daily at 7:05 a.m., with any outstanding deposits due to NSCC by 10:00 a.m., before the next Primary Cycle.

To help address this issue, NSCC proposes to add two new cycles (i.e., the Intraday Cycle and Supplemental Cycle, as described above) during the day, thereby expanding the time frame within which ETF agents may submit ETF Instructions to

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[70] 15 U.S.C. 78s(b)(2)(C).

[71] 15 U.S.C. 78q-1(b)(3)(F); 17 CFR 240.17Ad-22(e)(6) and (21).

[72] 15 U.S.C. 78q-1(b)(3)(F).

NSCC. The proposed cycles would enable ETF agents to submit new ETF Instructions to correct previously submitted ETF Instructions that were incorrect before the next Required Deposits were due. As such, the proposal would provide ETF agents with an opportunity to address erroneous ETF Instructions before needing to satisfy their next Required Deposit. Accordingly, the proposed Intraday Cycle and Supplemental Cycle would help ensure that Members' Required Deposits more closely reflect the risk presented by their intended transactions. Therefore, the Commission finds the proposed addition of the Intraday and Supplemental Cycles would help promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[73]

The Intraday Cycle also would enable NSCC to receive same-day settling ETF Instructions (corrections or otherwise), which NSCC cannot do under its current processes. Consequently, the proposed change would allow such same-day settling ETF Instructions to receive the benefits of NSCC processing. These same-day settling instructions would also allow netting reversals and corrections with other primary and secondary market activity. Due to the increased opportunities described above for accurate same-day settling ETF Instructions, the Commission finds that NSCC's proposed change to add the Intraday Cycle would help promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[74]

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73 Id.

74 Id.

The Commission also finds that NSCC's proposal to implement the automated threshold value reasonability check would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[75] As describe above, the automated threshold value reasonability check would hold certain potentially erroneous ETF Instructions (whether due to mistakes in manual entry or otherwise) in a pending status until confirmed by the submitting ETF agent. Holding potentially erroneous ETF Instructions in a "pending" status would help minimize the potential impact of erroneous ETF Instructions on Members' Required Deposits by preventing such ETF Instructions from being processed without confirmation from the submitting ETF agent. Thus, the automated threshold value reasonability check would help to ensure that Members are subject to Required Deposits that more closely reflect the Members' intended trading activity and not erroneously entered information because Members would be required to confirm that the entered information is in fact correct. Therefore, the Commission finds that the proposed change to add the automated threshold value reasonability check would help promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[76]

Finally, the Commission finds that NSCC's proposal to remove the repetitive language regarding next-day settling creates and redeems would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section

[75] Id.

[76] Id.

17A(b)(3)(F) of the Act.[77] Removing such repetitive language would help make the Rules more accurate and clear. Maintaining accurate and clear Rules would enable Members and other stakeholders to better understand their respective rights and obligations regarding NSCC's clearance and settlement of securities transactions. Accordingly, the Commission finds that the proposed change to remove repetitive language from the Rules would promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[78]

Rule 17Ad-22(e)(6)(i) under the Act requires NSCC to cover its credit exposures to its Members by establishing a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[79] As described above, ETF agents submit ETF Instructions to NSCC using a standardized input file, which involves manual data entry that poses an inherent risk of communicating potentially erroneous information. The proposed Intraday Cycle and Supplemental Cycle would enable ETF agents to submit new ETF Instructions to correct previously submitted ETF Instructions before Members need to satisfy their next Required Deposit. Similarly, the automated threshold value reasonability check would help minimize the potential impact of erroneous ETF Instructions on Members' Required Deposits by preventing such ETF Instructions from

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77 Id.

78 Id.

79 17 CFR 240.17Ad-22(e)(6)(i).

being processed absent confirmation from the submitting ETF agent. Thus, the proposed cycles and automated threshold value reasonability check are ETF-specific proposals designed to better produce margin levels commensurate with the risk and particular attributes of ETFs. Accordingly, the Commission finds that the proposed cycles and automated threshold value reasonability check would enhance NSCC's risk-based margin system in a manner that considers the risks and particular attributes specific to ETFs, consistent with Rule 17Ad-22(e)(6)(i).[80]

Rule 17Ad-22(e)(21) under the Act requires NSCC to be efficient and effective in meeting the requirements of its Members and the markets it serves, and regularly review the efficiency and effectiveness of its (1) clearing and settlement arrangements, (2) operating structure, including risk management policies, procedures, and systems, and (3) use of technology and communication procedures.[81] As stated above, the proposed cycles would enable ETF agents to submit new ETF Instructions to correct previously submitted ETF Instructions before Members need to satisfy their next Required Deposit. Similarly, the automated threshold value reasonability check would help minimize the potential impact of erroneous ETF Instructions on Members' Required Deposits by preventing such ETF Instructions from being processed absent confirmation from the submitting ETF agent. The Intraday Cycle also would enable NSCC to receive same-day settling ETF Instructions (corrections or otherwise), and thereby allow such same-day settling ETF Instructions to receive the benefits of NSCC processing. The proposed

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80 Id.

81 17 CFR 240.17Ad-22(e)(21).

cycles and automated threshold reasonability check constitute changes designed to improve the efficiency and effectiveness of NSCC's ETF clearance and settlement arrangements, NSCC's related operating structure, and NSCC's communications with ETF agents and authorized participants via the input and output reports. The proposal would enhance the efficiency and effectiveness of NSCC's provision of ETF-related services by (1) enabling ETF agents to correct previously submitted errors before additional Required Deposits are required, (2) preventing potentially erroneous ETF Instructions from being processing until confirmed, and (3) enabling same-day settling ETF Instructions to receive the benefits of NSCC processing. Accordingly, the Commission finds that the proposal would enhance NSCC's efficiency and effectiveness in meeting the requirements of its Members, as well as the efficiency and effectiveness of NSCC's ETF-related clearing and settlement arrangements, operating structure, and communication procedures, consistent with Rule 17Ad-22(e)(21).[82]

[82] Id.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act[83] and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR-NSCC-2017-019 be, and hereby is, APPROVED.[84]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[85]

Eduardo A. Aleman
Assistant Secretary

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83 15 U.S.C. 78q-1.

84 In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

85 17 CFR 200.30-3(a)(12).