

Required fields are shown with yellow backgrounds and asterisks.

Filing by National Securities Clearing Corporation
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Amend the Fee Structure

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Last Name *

Title *

E-mail *

Telephone * Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date

By

(Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) The proposed rule change of National Securities Clearing Corporation (“NSCC”) is attached hereto as Exhibit 5. The proposed rule change would amend Addendum A (Fee Structure) of the NSCC Rules & Procedures (“Rules”)¹ in order to (i) modify the Clearing Fund Maintenance Fee (“Maintenance Fee”), (ii) modify the “value out of the net” component of the Clearance Activity Fee, and (iii) replace the description currently under the heading “NSCC Pricing Policy” with a description of NSCC’s current policy regarding the issuance of rebates to Members, as described in greater detail below.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Businesses, Technology and Operations Committee of NSCC’s Board of Directors (“Board”) on September 15, 2020. The proposed change to include a description of NSCC’s current rebate policy was approved by management on November 16, 2020 pursuant to authority delegated by the Board.

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

(a) Purpose

The purpose of this proposed rule change is to amend Addendum A (Fee Structure) of the Rules in order to (i) modify the Maintenance Fee, (ii) modify the “value out of the net” component of the Clearance Activity Fee, and (iii) replace the description currently under the heading “NSCC Pricing Policy” with a description of NSCC’s current policy regarding the issuance of rebates to Members.

(i) OVERVIEW

NSCC provides clearance and settlement services for trades executed by its Members in the U.S. equity, corporate and municipal bond, and unit investment trust markets.

Members are assessed fees in accordance with Addendum A (Fee Structure). The current Fee Structure covers a multitude of fees that are assessed on Members based upon their activities and the services utilized.

NSCC operates a cost plus low margin pricing model and has in place procedures to control costs and to regularly review pricing levels against costs of operation. It reviews pricing levels against its costs of operation typically during the annual budget process. The budget is

¹ Capitalized terms not defined herein are defined in the Rules, available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/nsccl_rules.pdf.

approved annually by the Board. NSCC's fees are cost-based plus a markup, as approved by the Board or management (pursuant to authority delegated by the Board), as applicable. This markup or "low margin" is applied to recover development costs and operating expenses, and to accumulate capital sufficient to meet regulatory and economic requirements.

Maintenance Fee

NSCC implemented the Maintenance Fee in the current Fee Structure in 2016 in order to (i) diversify NSCC's revenue sources, mitigating NSCC's dependence on revenues driven by trading volumes, and (ii) add a more stable revenue source that would contribute to NSCC's operating margin by offsetting increasing costs and expenses.² The fee is charged to all NSCC Members and Limited Members that are required to make deposits to the NSCC Clearing Fund (collectively, "Contributing Members") in proportion to the Contributing Member's average, end of day, monthly cash deposit to the Clearing Fund.

Until June 2020, the Maintenance Fee had been calculated monthly, in arrears, as the product of (A) 0.25 percent and (B) the average of the Contributing Member's actual cash deposit to the NSCC Clearing Fund as of the end of each day of the month, multiplied by the number of days in that month and divided by 360. However, by its terms at the time, the fee had been waived if the monthly rate of return on NSCC's investment of the cash portion in the Clearing Fund was less than 0.25 percent for the month ("Waiver Provision").

In June 2020, NSCC modified the Maintenance Fee in three ways.³ First, NSCC removed the Waiver Provision. Second, instead of using a fixed rate of 0.25 percent when calculating the Maintenance Fee, NSCC calculated the fee using the corresponding month's average Interest Rate on Excess Reserves (i.e., the IOER rate) that is determined by the Board of Governors of the Federal Reserve System.⁴ Third, NSCC set a ceiling of 0.25 percent and a floor of 0.00 percent on the IOER rate used in the fee calculation.

Those three modifications were designed to help address an immediate financial issue that NSCC was experiencing due to the coronavirus global pandemic and overall reaction by the financial markets, and, based on information at the time, to better position NSCC going forward, with respect to its ability to fund its default liquidity resources in various economic environments, as well as to improve the overall functioning of the Maintenance Fee.⁵ However, after completing NSCC's annual budgeting process that began in August and finished in October

² Securities Exchange Act Release No. 78525 (August 9, 2016), 81 FR 54146 (August 15, 2016) (SR-NSCC-2016-002).

³ Securities Exchange Act Release No. 89141 (June 24, 2020), 85 FR 39253 (June 30, 2020) (SR-NSCC-2020-011) ("June Filing").

⁴ Policy Tools, Interest on Required Reserve Balances and Excess Balances, <https://www.federalreserve.gov/monetarypolicy/reqresbalances.htm>.

⁵ See June Filing, supra note 3 (discussing the rationale for the three modifications made to the Maintenance Fee).

2020 – in which NSCC evaluated its short- and long-term financial position in consideration of expected Contributing Member activity, revenues, cost of funding,⁶ market volatility, and the financial markets more broadly, concerns remained around NSCC’s net income operating margin.

To help address this issue, NSCC proposes to further modify the Maintenance Fee. Specifically, NSCC will no longer calculate the fee using the corresponding month’s average IOER rate but, instead, return to using a fixed rate of 0.25 percent, which, consequently, would render the current floor of 0.00 percent unnecessary. NSCC is using a fixed rate of 0.25 percent so that Members will not be charged an amount greater than what was possible under the original and current calculation of the fee.

NSCC believes that reverting to a fixed rate in calculating the Maintenance Fee would have a number of benefits. For example, by using a fixed rate, the fee would no longer fluctuate as the IOER rate fluctuates, which should help Contributing Members better anticipate the cost of the fee and, for NSCC, stabilize revenue generated from the fee. Greater stability in the revenue generated from the fee would help support NSCC’s net income operating margin and, accordingly, its credit ratings, which are key factors in NSCC’s costs, expenses, and funding.⁷ Additionally, the proposed change would help provide consistent pricing between NSCC and its affiliate clearing agencies, The Depository Trust Company (“DTC”) and Fixed Income Clearing Corporation (“FICC”),⁸ as both DTC and FICC have filed proposed rule changes concurrently with this filing that would result in the same calculation of their respective maintenance fees.⁹

Clearance Activity Fee

The “value out of the net” component of the Clearance Activity Fee in the Fee Structure is a fee based on the daily aggregate market value of all settling CNS positions after netting. It is

⁶ See June Filing, supra note 3 (discussing NSCC’s cost of funding).

⁷ Not only could a downgrade to an NSCC credit rating increase NSCC costs and expenses, but, more importantly, it could reduce the overall availability of default liquidity resources to NSCC if investors or lending banks reduce their current levels of engagement with NSCC.

⁸ The Depository Trust & Clearing Corporation (“DTCC”) is the parent company of DTC, NSCC, and FICC. DTCC operates on a shared services model for DTC, NSCC, and FICC. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to DTC, NSCC, or FICC.

⁹ See File No. SR-DTC-2020-014 and File No. SR-FICC-2020-014 available at <https://www.dtcc.com/legal/sec-rule-filings>.

currently \$2.12 per million dollars of settling value (i.e., the absolute value of the CNS Long Positions and Short Positions).¹⁰

Due to the coronavirus global pandemic and overall reaction by the financial markets, NSCC's cost of funding has risen sharply in 2020, particularly for NSCC's key default liquidity resources. The unexpected increases in cost and expense to secure and maintain those default liquidity resources has added millions of dollars to NSCC's expense.

As described above, after completing NSCC's 2020 annual budgeting process – in which NSCC evaluated its short- and long-term financial position in consideration of expected Member activity, revenues, cost of funding, market volatility, and the financial markets more broadly, concerns remained around NSCC's net income operating margin. In order to address this issue and to better align cost with revenue, NSCC proposes to modify the “value out of the net” component of the Clearance Activity Fee from \$2.12 per million dollars of settling value to \$2.56 per million dollars of settling value. Specifically, NSCC anticipates that the proposed change would enable NSCC to offset the increase in its cost and expense while generating a low net income operating margin, consistent with NSCC's cost plus low margin pricing model.

NSCC believes modifying the “value out of the net” component of the Clearance Activity Fee would further help support NSCC's net income operating margin and, accordingly, its credit ratings, which, as described above, are key factors in NSCC's costs, expenses, and funding.

Rebate Policy

NSCC is also proposing to amend Section VIII of the Fee Structure to replace the description currently under the heading “NSCC Pricing Policy” with a description of its current policy regarding the issuance of rebates to Members. In connection with this change, the proposed change would also amend the title of Section VIII to “NSCC Rebate Policy” to better describe the policy in this section.

Section VIII of the Fee Structure currently includes an outdated description of NSCC's policy to adjust Members' invoices based on NSCC's revenues. This description states that NSCC may adjust invoices down in the form of a discount or up in the form of a surcharge, based on its revenues. NSCC did historically provide its Members with a discount on their invoices, but it does not have any record of adjusting Members' invoices up, in the form of a surcharge, in the past.

NSCC views its practice of providing a rebate to its Members as a corporate function, and not related to its operation as a self-regulatory organization. An NSCC rebate is essentially a return of the revenue that NSCC collects through the fees it charges Members for its services (as set forth in Addendum A of the Rules). Rebates are not related to the amounts Members deposit with NSCC as their Required Fund Deposits, which are made up of risk-based margin charges

¹⁰ The current “value out of the net” component of the Clearance Activity Fee was implemented in 2019 as part of fee changes to address pricing complexity. See Securities Exchange Act Release No. 84770 (December 10, 2018), 83 FR 64374 (December 14, 2018) (SR-NSCC-2018-011).

calculated pursuant to Procedure XV of the Rules. The determination to provide a rebate is made at the corporation-level, based on a number of factors and considerations, as described below, and is not a separate determination made for each individual Member.

Following the financial recession of 2008, NSCC ceased providing such discounts in connection with the implementation of a financial strategy to strengthen its financial position and health. As a result of that strategy and improved financial markets, in 2019 NSCC determined to reinstitute its practice of discounting Members' invoices, in the form of a rebate, based on its financial performance. In connection with this decision, NSCC is proposing to replace the language under the heading "NSCC Pricing Policy" in Section VIII of the Fee Structure to describe its current rebate practice. This proposed change would not change NSCC's current rebate practice but would provide Members with transparency into this practice and the governance around rebates.

(ii) PROPOSED FEE CHANGES

NSCC is proposing to change the Maintenance Fee in Subsection G (Clearing Fund Maintenance Fee) of Section V (Pass-Through and Other Fees) of the Fee Structure. Specifically, NSCC is proposing to modify the Maintenance Fee by removing language regarding application of the IOER rate and a floor of 0.00 percent.

In addition, NSCC is proposing to change the Clearance Activity Fee in Subsection A (Clearance Activity Fee) of Section II (Trade Clearance Fees) of the Fee Structure. Specifically, NSCC is proposing to modify the "value out of the net" component of the Clearance Activity Fee from \$2.12 per million of settling value to \$2.56 per million of settling value.

Finally, NSCC is proposing to amend Section VIII of the Fee Structure to replace the description currently under the heading "NSCC Pricing Policy" with a description of its current policy regarding the issuance of rebates to Members, as described above.

First, in connection with this change, the proposed change would also amend the title of Section VIII to "NSCC Rebate Policy" to better describe the policy in this section.

Second, the proposed language would describe that NSCC may provide Members with a rebate of excess net income, and would define excess net income as either income of NSCC or income related to one business line of NSCC, after application of expenses, capitalization costs, and applicable regulatory requirements. The language would also state that a rebate is discretionary, to make it clear that NSCC is not obligated to provide a rebate.

Third, the proposed language would state that a rebate would be approved by the Board. The proposed language would also state that, in determining whether a rebate is appropriate, the Board may consider, among other things, NSCC's regulatory capital requirements,¹¹ anticipated

¹¹ NSCC manages its general business risk by holding sufficient liquid net assets funded by equity to cover potential general business losses so it can continue operations and services as going concerns if those losses materialize, in compliance with the requirements of Rule 17Ad-22(e)(15). 17 CFR 240.17Ad-22(e)(15). NSCC maintains a

expenses, investment needs, anticipated future expenses with respect to improvement or maintenance of NSCC's operations, cash balances, financial projections, and appropriate level of shareholders' equity.

Fourth, the proposed language would state that, if the Board determined to issue a rebate, it would set a rebate period and a rebate payment date, both of which are used to determine which Members are eligible for a rebate. The proposed language would state that Members that maintain their membership during all or a portion of the rebate period and on the rebate payment date are eligible for a rebate.

Finally, the proposed language would describe how rebates are applied to the invoices of eligible Members. The proposed language would state that rebates are applied to all eligible Members on a pro-rata basis based on such Members' gross fees paid to NSCC within the applicable rebate period, excluding pass-through fees and interest earned on Required Fund Deposits. The proposed language would also state that rebates are applied to eligible Members' invoices on the rebate payment date as either a reduction in fees owed or, if fees owed are lower than the allocated rebate amount, a payment of such difference. The proposed language would also note that rebate amounts may be adjusted for miscellaneous charges and discounts.

(iii) EXPECTED MEMBER IMPACT

The proposed rule change is expected to increase NSCC's annual revenue by approximately \$31.6 million.

In general, NSCC anticipates that, as result of the proposed changes, approximately 62% of impacted affiliated family of members would have a fee increase of less than \$1,000 per year, approximately 24% of impacted affiliated family of members would have a fee increase between \$1,000 to \$100,000 per year, approximately 10% of impacted affiliated family of members would have a fee increase of \$100,000 to \$1 million per year, and approximately 4% of impacted affiliated family of members would have a fee increase of \$1 million or greater per year.

(iv) MEMBER OUTREACH

NSCC has conducted ongoing outreach to each Member in order to provide them with notice of the proposed changes and the anticipated impact for the Member. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Securities and Exchange Commission ("Commission") will be notified of any written comments received.

Clearing Agency Policy on Capital Requirements which defines the amount of capital it must maintain for this purpose and sets forth the manner in which this amount is calculated. See Securities Exchange Act Release No. 89360 (July 21, 2020), 85 FR 45280 (July 27, 2020) (SR-NSCC-2020-014) (amending original filing).

(v) **IMPLEMENTATION TIMEFRAME**

NSCC would implement this proposal on January 1, 2021. As proposed, a legend would be added to the Fee Structure stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend also would include the date on which such changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would automatically be removed.

(b) **Statutory Basis**

NSCC believes this proposal is consistent with the requirements of the Securities Exchange Act of 1934 (the “Act”), and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, NSCC believes the proposed changes to modify the Maintenance Fee and the “value out of the net” component of the Clearance Activity Fee are consistent with Section 17A(b)(3)(D) of the Act¹² and the proposed change to include a description of NSCC’s current policy regarding the issuance of rebates to Members is consistent with Rule 17Ad-22(e)(23)(ii),¹³ as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(D) of the Act¹⁴ requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. NSCC believes that the proposed changes to the Maintenance Fee and the “value out of the net” component of the Clearance Activity Fee are consistent with this provision of the Act.

As described above, the proposal would modify the Maintenance Fee to no longer calculate the fee using the corresponding month’s average IOER rate; rather, the calculation would revert to using a fixed rate of 0.25 percent, thus, negating the need to maintain the current floor of 0.00 percent.

Because the proposed change would not alter how the Maintenance Fee is currently allocated (i.e., charged) to Contributing Members, NSCC believes the fee would continue to be equitably allocated. More specifically, as mentioned above, the Maintenance Fee is and would continue to be charged to all Contributing Members in proportion to the Contributing Member’s average monthly cash deposit to the Clearing Fund. As such, and as is currently the case, Contributing Members that make greater use of NSCC’s guaranteed services or which have activity in those services that present greater risk to NSCC would generally be subject to a larger Maintenance Fee because such Contributing Members would typically be required to maintain larger Clearing Fund deposits pursuant to the Rules.¹⁵ Conversely, Contributing Members that use NSCC’s guaranteed services less or which have activity that presents less risk would generally be subject to a smaller Maintenance Fee because such Contributing Members would

¹² 15 U.S.C. 78q-1(b)(3)(D).

¹³ 17 CFR.17Ad-22(e)(23)(ii).

¹⁴ 15 U.S.C. 78q-1(b)(3)(D).

¹⁵ See Rule 4 and Procedure XV, supra note 1.

typically be required to maintain smaller Clearing Fund deposits pursuant to the Rules.¹⁶ The proposed change to the Maintenance Fee would not adjust that allocation. For this reason, NSCC believes the Maintenance Fee would continue to be equitably allocated among Contributing Members.

Similarly, NSCC believes that the Maintenance Fee would continue to be a reasonable fee under the proposed change described above. For example, by using a fixed rate, instead of a rate that fluctuates with the IOER rate, Contributing Members should be better able to anticipate the cost of the fee. Meanwhile, a fixed rate would not only improve NSCC's ability to estimate revenue from the fee, but it also would stabilize the revenue received from the fee. As described above, greater stability in the revenue generated from the fee would help support NSCC's net income operating margin and, accordingly, its credit ratings, which are key factors in NSCC's costs, expenses, and funding. Additionally, using a fixed rate of 0.25 percent would help ensure that Contributing Members are not charged an amount greater than what was possible under the original and current calculation of the fee. Lastly, the proposed change would help establish consistent pricing between NSCC and its affiliates, DTC and FICC, regarding each of their respective Maintenance Fees, as concurrent proposals by DTC and FICC would result in the same calculation.¹⁷ For this reason, NSCC believes the Maintenance Fee would continue to be reasonable. Based on the forgoing, NSCC believes the proposed rule change to the Maintenance Fee is consistent with Section 17A(b)(3)(D) of the Act.¹⁸

NSCC believes the proposed rule change to the "value out of the net" component of the Clearance Activity Fee would provide for the equitable allocation of reasonable fees. Because the proposed change would not alter how the Clearance Activity Fee is currently allocated (i.e., charged) to Members, NSCC believes the fee would continue to be equitably allocated. More specifically, as mentioned above, the "value out of the net" component of the Clearance Activity Fee is based on a Member's daily aggregate market value of all settling CNS positions after netting. As such, and as is currently the case, Members that make greater use of NSCC's guaranteed services would generally be subject to a larger Clearance Activity Fee because such Members would typically have higher value of net positions after netting. Conversely, Members that use NSCC's guaranteed services less would generally be subject to a smaller Clearance Activity Fee because such Members would typically have lower value of net positions after netting. The proposed change to the "value out of the net" component of the Clearance Activity Fee would not adjust that allocation. For this reason, NSCC believes the Clearance Activity Fee would continue to be equitably allocated among Members.

NSCC believes that the Clearance Activity Fee would continue to be a reasonable fee under the proposed change described above. This is because the proposed change to modify the "value out of the net" component of the Clearance Activity Fee is designed to offset NSCC's increased costs and expenses while generating a low net income operating margin. As described

¹⁶ Id.

¹⁷ See supra note 9.

¹⁸ 15 U.S.C. 78q-1(b)(3)(D).

above, in determining the appropriate level of the proposed change to modify the “value out of the net” component of the Clearance Activity Fee, NSCC considered a variety of factors, including expected Member activity, revenues, cost of funding, market volatility, and the financial markets more broadly. Based on that consideration, NSCC believes the proposed change would allow NSCC to assess a fee that is better aligned with NSCC’s increased costs and expenses. Having the ability to assess a fee that is better aligned with NSCC’s increased costs and expenses would further help support NSCC’s net income operating margin and, accordingly, its credit ratings, which are key factors in NSCC’s costs, expenses, and funding. For this reason, NSCC believes the Clearance Activity Fee would continue to be reasonable. Based on the forgoing, NSCC believes the proposed rule change to the “value out of the net” component of the Clearance Activity Fee is consistent with Section 17A(b)(3)(D) of the Act.¹⁹

Rule 17Ad-22(e)(23)(ii) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.²⁰ The proposed change would replace an outdated description of NSCC’s past practice of adjusting Members’ invoices with an updated description of its current rebate practice, which, when applicable, results in a reduction to the amount of fees a Member owes to NSCC. By updating the Fee Structure with a clear, transparent description of NSCC’s current rebate practice, the proposed change would provide Members with sufficient information to evaluate the fees they may incur by participating in NSCC. Therefore, NSCC believes the proposed change would be consistent with the requirements of Rule 17Ad-22(e)(23)(ii).²¹

4. Self-Regulatory Organization’s Statement on Burden on Competition

NSCC does not believe that the proposed change to the Maintenance Fee would have an impact on competition among Contributing Members. As described above, the Maintenance Fee is charged ratably based on Contributing Members’ use of NSCC’s guaranteed services, as reflected in Contributing Members’ deposits to the Clearing Fund. Thus, the fee is designed to be reflective of each Contributing Member’s individual activity at NSCC. Additionally, NSCC does not believe reverting to a fixed rate of 0.25 percent in calculating the Maintenance Fee would have any impact on competition among Contributing Members because using such a rate means that Contributing Members still cannot be assessed an amount greater than what could have been assessed under the original and current calculations of the fee.

However, appreciating that the value of a dollar is not consistent for each Contributing Member, if the change to no longer calculate the fee using the corresponding month’s average IOER rate would create a competitive burden for a Contributing Member because the Contributing Member could be assessed a higher fee at a time when that IOER rate is lower than

¹⁹ Id.

²⁰ 17 CFR 240.17Ad-22(e)(23)(ii).

²¹ Id.

the proposed 0.25 percent fixed rate, NSCC believes such a burden would not be significant, given that the amount assessed would still be within the range of what could be assessed under the current calculation. Moreover, NSCC believes that any such burden would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.²²

The burden would be necessary because it is essential that NSCC continue to offset some of its costs and expenses with stable revenue generated from the Maintenance Fee, regardless of the economic environment. As described above, not doing so could adversely affect NSCC's credit ratings, which could further increase funding or, possibly, decrease the availability of crucial liquidity resources for NSCC. The burden would be appropriate because, as described above, the Maintenance Fee is calculated, using a balanced formula, to assess a fee that is reflective of the Contributing Member's use of NSCC's guaranteed services, so that NSCC can defray some of its costs and expenses in providing those services. More specifically, returning to a fixed rate of 0.25 percent would be appropriate because it is the same rate that was used prior to the change made in June 2020,²³ and it is currently the ceiling used in the existing calculation; thus, the new calculation still would not use a rate any higher than it could have previously.

NSCC believes the proposed rule change to modify the "value out of the net" component of the Clearance Activity Fee may have an impact on competition among its Members because the change would likely increase the fees of those Members that utilize NSCC's guaranteed service when compared to their fees under the current Fee Structure. NSCC believes the proposed change could burden competition by negatively affecting such Members' operating costs. While these Members may experience increases in their fees when compared to their fees under the current Fee Structure, NSCC does not believe the proposed change in and of itself mean that the burden on competition is significant. This is because even though the amount of the fee increase may seem significant (e.g., from \$2.12 to \$2.56 per million of settling value), NSCC believes the increase in fees would similarly affect all Members that utilize NSCC's guaranteed services and would be reflective of each Member's individual activity at NSCC, and therefore the burden on competition would not be significant. Regardless of whether the burden on competition is deemed significant, NSCC believes any burden that is created by this proposed change would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.²⁴

The burden would be necessary because it is essential that NSCC continue to offset some of its costs and expenses with revenue generated from the Clearance Activity Fee, regardless of the economic environment. As described above, not doing so could adversely affect NSCC's credit ratings, which could further increase funding or, possibly, decrease the availability of crucial liquidity resources for NSCC. The burden would be appropriate because, as described above, the Clearance Activity Fee is calculated, using a balanced formula, to assess a fee that is

²² 15 U.S.C. 78q-1(b)(3)(I).

²³ See June Filing, supra note 3.

²⁴ Id.

reflective of the Member's use of NSCC's guaranteed services, so that NSCC can defray some of its costs and expenses in providing those services. More specifically, NSCC believes the proposed rule change to modify the "value out of the net" component of the Clearance Activity Fee would be appropriate because it would allow NSCC to assess a fee that is better aligned with NSCC's increased costs and expenses while generating a low net income operating margin.

NSCC does not believe the proposed change to describe its current rebate practice would have any impact, or impose any burden, on competition among its Members. As described above, this proposed rule change would replace outdated information currently in the Fee Structure with an updated description of NSCC's current rebate practice. As described in the proposed language, under its current practice, rebates are allocated to eligible Members on a pro-rata basis based on such Members' gross fees paid to NSCC within the applicable rebate period. Therefore, the current practice is applied equally to all eligible Members. The proposed change to provide Members with transparency into this practice would not cause any increase or decrease in the rebates Members may receive. Therefore, this proposed rule change would not have any impact, or impose any burden, on competition.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to this proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

- (a) The proposed rule changes are to take effect immediately upon filing pursuant to paragraph A of Section 19(b)(3)²⁵ of the Act.
- (b) The proposed rule changes establish or change a due, fee, or other charge.²⁶
- (c) Not applicable.
- (d) Not applicable.

²⁵ 15 U.S.C 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(2).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

While the proposed changes to the Maintenance Fee and the rebate policy are not based on the rules of another self-regulatory organization or of the Commission, NSCC's affiliates, DTC and FICC, have filed similar proposals concurrently with this filing to include in their respective rules identical calculations of their respective maintenance fees and rebate policies.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act of 2010

Not applicable.

11. Exhibits

Exhibit 1 – Not applicable.

Exhibit 1A – Notice of proposed rule change for publication in the Federal Register.

Exhibit 2 – Not applicable.

Exhibit 3 – Confidential Supporting Information. *Omitted and filed separately with the Commission. Confidential treatment of this Exhibit 3 pursuant to 17 CFR 240.24b-2 being requested.*

Exhibit 4 – Not applicable.

Exhibit 5 – Proposed changes to the Rules.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-NSCC-2020-018)

[DATE]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Structure

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November __, 2020, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder.⁴ 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 Addendum A (Fee Structure) of the NSCC Rules & Procedures (“Rules”)⁵ in order to (i) modify the Clearing Fund Maintenance Fee (“Maintenance Fee”), (ii) modify the “value out of the net”

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Capitalized terms not defined herein are defined in the Rules, available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/nsc_rules.pdf.

component of the Clearance Activity Fee, and (iii) replace the description currently under the heading “NSCC Pricing Policy” with a description of NSCC’s current policy regarding the issuance of rebates to Members, as described in greater detail below.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Addendum A (Fee Structure) of the Rules in order to (i) modify the Maintenance Fee, (ii) modify the “value out of the net” component of the Clearance Activity Fee, and (iii) replace the description currently under the heading “NSCC Pricing Policy” with a description of NSCC’s current policy regarding the issuance of rebates to Members.

(i) **OVERVIEW**

NSCC provides clearance and settlement services for trades executed by its Members in the U.S. equity, corporate and municipal bond, and unit investment trust markets.

Members are assessed fees in accordance with Addendum A (Fee Structure). The current Fee Structure covers a multitude of fees that are assessed on Members based upon their activities and the services utilized.

NSCC operates a cost plus low margin pricing model and has in place procedures to control costs and to regularly review pricing levels against costs of operation. It reviews pricing levels against its costs of operation typically during the annual budget process. The budget is approved annually by the Board. NSCC's fees are cost-based plus a markup, as approved by the Board or management (pursuant to authority delegated by the Board), as applicable. This markup or "low margin" is applied to recover development costs and operating expenses, and to accumulate capital sufficient to meet regulatory and economic requirements.

Maintenance Fee

NSCC implemented the Maintenance Fee in the current Fee Structure in 2016 in order to (i) diversify NSCC's revenue sources, mitigating NSCC's dependence on revenues driven by trading volumes, and (ii) add a more stable revenue source that would contribute to NSCC's operating margin by offsetting increasing costs and expenses.⁶ The fee is charged to all NSCC Members and Limited Members that are required to make deposits to the NSCC Clearing Fund (collectively, "Contributing Members") in proportion to the Contributing Member's average, end of day, monthly cash deposit to the Clearing Fund.

⁶ Securities Exchange Act Release No. 78525 (August 9, 2016), 81 FR 54146 (August 15, 2016) (SR-NSCC-2016-002).

Until June 2020, the Maintenance Fee had been calculated monthly, in arrears, as the product of (A) 0.25 percent and (B) the average of the Contributing Member's actual cash deposit to the NSCC Clearing Fund as of the end of each day of the month, multiplied by the number of days in that month and divided by 360. However, by its terms at the time, the fee had been waived if the monthly rate of return on NSCC's investment of the cash portion in the Clearing Fund was less than 0.25 percent for the month ("Waiver Provision").

In June 2020, NSCC modified the Maintenance Fee in three ways.⁷ First, NSCC removed the Waiver Provision. Second, instead of using a fixed rate of 0.25 percent when calculating the Maintenance Fee, NSCC calculated the fee using the corresponding month's average Interest Rate on Excess Reserves (i.e., the IOER rate) that is determined by the Board of Governors of the Federal Reserve System.⁸ Third, NSCC set a ceiling of 0.25 percent and a floor of 0.00 percent on the IOER rate used in the fee calculation.

Those three modifications were designed to help address an immediate financial issue that NSCC was experiencing due to the coronavirus global pandemic and overall reaction by the financial markets, and, based on information at the time, to better position NSCC going forward, with respect to its ability to fund its default liquidity resources in various economic environments, as well as to improve the overall functioning of the

⁷ Securities Exchange Act Release No. 89141 (June 24, 2020), 85 FR 39253 (June 30, 2020) (SR-NSCC-2020-011) ("June Filing").

⁸ Policy Tools, Interest on Required Reserve Balances and Excess Balances, <https://www.federalreserve.gov/monetarypolicy/reqresbalances.htm>.

Maintenance Fee.⁹ However, after completing NSCC's annual budgeting process that began in August and finished in October 2020 – in which NSCC evaluated its short- and long-term financial position in consideration of expected Contributing Member activity, revenues, cost of funding,¹⁰ market volatility, and the financial markets more broadly, concerns remained around NSCC's net income operating margin.

To help address this issue, NSCC proposes to further modify the Maintenance Fee. Specifically, NSCC will no longer calculate the fee using the corresponding month's average IOER rate but, instead, return to using a fixed rate of 0.25 percent, which, consequently, would render the current floor of 0.00 percent unnecessary. NSCC is using a fixed rate of 0.25 percent so that Members will not be charged an amount greater than what was possible under the original and current calculation of the fee.

NSCC believes that reverting to a fixed rate in calculating the Maintenance Fee would have a number of benefits. For example, by using a fixed rate, the fee would no longer fluctuate as the IOER rate fluctuates, which should help Contributing Members better anticipate the cost of the fee and, for NSCC, stabilize revenue generated from the fee. Greater stability in the revenue generated from the fee would help support NSCC's net income operating margin and, accordingly, its credit ratings, which are key factors in NSCC's costs, expenses, and funding.¹¹ Additionally, the proposed change would help

⁹ See June Filing, supra note 7 (discussing the rationale for the three modifications made to the Maintenance Fee).

¹⁰ See June Filing, supra note 7 (discussing NSCC's cost of funding).

¹¹ Not only could a downgrade to an NSCC credit rating increase NSCC costs and expenses, but, more importantly, it could reduce the overall availability of default liquidity resources to NSCC if investors or lending banks reduce their current levels of engagement with NSCC.

provide consistent pricing between NSCC and its affiliate clearing agencies, The Depository Trust Company (“DTC”) and Fixed Income Clearing Corporation (“FICC”),¹² as both DTC and FICC have filed proposed rule changes concurrently with this filing that would result in the same calculation of their respective maintenance fees.¹³

Clearance Activity Fee

The “value out of the net” component of the Clearance Activity Fee in the Fee Structure is a fee based on the daily aggregate market value of all settling CNS positions after netting. It is currently \$2.12 per million dollars of settling value (i.e., the absolute value of the CNS Long Positions and Short Positions).¹⁴

Due to the coronavirus global pandemic and overall reaction by the financial markets, NSCC’s cost of funding has risen sharply in 2020, particularly for NSCC’s key default liquidity resources. The unexpected increases in cost and expense to secure and maintain those default liquidity resources has added millions of dollars to NSCC’s expense.

As described above, after completing NSCC’s 2020 annual budgeting process – in which NSCC evaluated its short- and long-term financial position in consideration of

¹² The Depository Trust & Clearing Corporation (“DTCC”) is the parent company of DTC, NSCC, and FICC. DTCC operates on a shared services model for DTC, NSCC, and FICC. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to DTC, NSCC, or FICC.

¹³ See File No. SR-DTC-2020-014 and File No. SR-FICC-2020-014 available at <https://www.dtcc.com/legal/sec-rule-filings>.

¹⁴ The current “value out of the net” component of the Clearance Activity Fee was implemented in 2019 as part of fee changes to address pricing complexity. See Securities Exchange Act Release No. 84770 (December 10, 2018), 83 FR 64374 (December 14, 2018) (SR-NSCC-2018-011).

expected Member activity, revenues, cost of funding, market volatility, and the financial markets more broadly, concerns remained around NSCC's net income operating margin. In order to address this issue and to better align cost with revenue, NSCC proposes to modify the "value out of the net" component of the Clearance Activity Fee from \$2.12 per million dollars of settling value to \$2.56 per million dollars of settling value. Specifically, NSCC anticipates that the proposed change would enable NSCC to offset the increase in its cost and expense while generating a low net income operating margin, consistent with NSCC's cost plus low margin pricing model.

NSCC believes modifying the "value out of the net" component of the Clearance Activity Fee would further help support NSCC's net income operating margin and, accordingly, its credit ratings, which, as described above, are key factors in NSCC's costs, expenses, and funding.

Rebate Policy

NSCC is also proposing to amend Section VIII of the Fee Structure to replace the description currently under the heading "NSCC Pricing Policy" with a description of its current policy regarding the issuance of rebates to Members. In connection with this change, the proposed change would also amend the title of Section VIII to "NSCC Rebate Policy" to better describe the policy in this section.

Section VIII of the Fee Structure currently includes an outdated description of NSCC's policy to adjust Members' invoices based on NSCC's revenues. This description states that NSCC may adjust invoices down in the form of a discount or up in the form of a surcharge, based on its revenues. NSCC did historically provide its

Members with a discount on their invoices, but it does not have any record of adjusting Members' invoices up, in the form of a surcharge, in the past.

NSCC views its practice of providing a rebate to its Members as a corporate function, and not related to its operation as a self-regulatory organization. An NSCC rebate is essentially a return of the revenue that NSCC collects through the fees it charges Members for its services (as set forth in Addendum A of the Rules). Rebates are not related to the amounts Members deposit with NSCC as their Required Fund Deposits, which are made up of risk-based margin charges calculated pursuant to Procedure XV of the Rules. The determination to provide a rebate is made at the corporation-level, based on a number of factors and considerations, as described below, and is not a separate determination made for each individual Member.

Following the financial recession of 2008, NSCC ceased providing such discounts in connection with the implementation of a financial strategy to strengthen its financial position and health. As a result of that strategy and improved financial markets, in 2019 NSCC determined to reinstitute its practice of discounting Members' invoices, in the form of a rebate, based on its financial performance. In connection with this decision, NSCC is proposing to replace the language under the heading "NSCC Pricing Policy" in Section VIII of the Fee Structure to describe its current rebate practice. This proposed change would not change NSCC's current rebate practice but would provide Members with transparency into this practice and the governance around rebates.

(ii) PROPOSED FEE CHANGES

NSCC is proposing to change the Maintenance Fee in Subsection G (Clearing Fund Maintenance Fee) of Section V (Pass-Through and Other Fees) of the Fee Structure.

Specifically, NSCC is proposing to modify the Maintenance Fee by removing language regarding application of the IOER rate and a floor of 0.00 percent.

In addition, NSCC is proposing to change the Clearance Activity Fee in Subsection A (Clearance Activity Fee) of Section II (Trade Clearance Fees) of the Fee Structure. Specifically, NSCC is proposing to modify the “value out of the net” component of the Clearance Activity Fee from \$2.12 per million of settling value to \$2.56 per million of settling value.

Finally, NSCC is proposing to amend Section VIII of the Fee Structure to replace the description currently under the heading “NSCC Pricing Policy” with a description of its current policy regarding the issuance of rebates to Members, as described above.

First, in connection with this change, the proposed change would also amend the title of Section VIII to “NSCC Rebate Policy” to better describe the policy in this section.

Second, the proposed language would describe that NSCC may provide Members with a rebate of excess net income, and would define excess net income as either income of NSCC or income related to one business line of NSCC, after application of expenses, capitalization costs, and applicable regulatory requirements. The language would also state that a rebate is discretionary, to make it clear that NSCC is not obligated to provide a rebate.

Third, the proposed language would state that a rebate would be approved by the Board. The proposed language would also state that, in determining whether a rebate is appropriate, the Board may consider, among other things, NSCC’s regulatory capital

requirements,¹⁵ anticipated expenses, investment needs, anticipated future expenses with respect to improvement or maintenance of NSCC's operations, cash balances, financial projections, and appropriate level of shareholders' equity.

Fourth, the proposed language would state that, if the Board determined to issue a rebate, it would set a rebate period and a rebate payment date, both of which are used to determine which Members are eligible for a rebate. The proposed language would state that Members that maintain their membership during all or a portion of the rebate period and on the rebate payment date are eligible for a rebate.

Finally, the proposed language would describe how rebates are applied to the invoices of eligible Members. The proposed language would state that rebates are applied to all eligible Members on a pro-rata basis based on such Members' gross fees paid to NSCC within the applicable rebate period, excluding pass-through fees and interest earned on Required Fund Deposits. The proposed language would also state that rebates are applied to eligible Members' invoices on the rebate payment date as either a reduction in fees owed or, if fees owed are lower than the allocated rebate amount, a payment of such difference. The proposed language would also note that rebate amounts may be adjusted for miscellaneous charges and discounts.

¹⁵ NSCC manages its general business risk by holding sufficient liquid net assets funded by equity to cover potential general business losses so it can continue operations and services as going concerns if those losses materialize, in compliance with the requirements of Rule 17Ad-22(e)(15). 17 CFR 240.17Ad-22(e)(15). NSCC maintains a Clearing Agency Policy on Capital Requirements which defines the amount of capital it must maintain for this purpose and sets forth the manner in which this amount is calculated. See Securities Exchange Act Release No. 89360 (July 21, 2020), 85 FR 45280 (July 27, 2020) (SR-NSCC-2020-014) (amending original filing).

(iii) EXPECTED MEMBER IMPACT

The proposed rule change is expected to increase NSCC's annual revenue by approximately \$31.6 million.

In general, NSCC anticipates that, as result of the proposed changes, approximately 62% of impacted affiliated family of members would have a fee increase of less than \$1,000 per year, approximately 24% of impacted affiliated family of members would have a fee increase between \$1,000 to \$100,000 per year, approximately 10% of impacted affiliated family of members would have a fee increase of \$100,000 to \$1 million per year, and approximately 4% of impacted affiliated family of members would have a fee increase of \$1 million or greater per year.

(iv) MEMBER OUTREACH

NSCC has conducted ongoing outreach to each Member in order to provide them with notice of the proposed changes and the anticipated impact for the Member. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

(v) IMPLEMENTATION TIMEFRAME

NSCC would implement this proposal on January 1, 2021. As proposed, a legend would be added to the Fee Structure stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend also would include the date on which such changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would automatically be removed.

2. Statutory Basis

NSCC believes this proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency.

Specifically, NSCC believes the proposed changes to modify the Maintenance Fee and the “value out of the net” component of the Clearance Activity Fee are consistent with Section 17A(b)(3)(D) of the Act¹⁶ and the proposed change to include a description of NSCC’s current policy regarding the issuance of rebates to Members is consistent with Rule 17Ad-22(e)(23)(ii),¹⁷ as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(D) of the Act¹⁸ requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. NSCC believes that the proposed changes to the Maintenance Fee and the “value out of the net” component of the Clearance Activity Fee are consistent with this provision of the Act.

As described above, the proposal would modify the Maintenance Fee to no longer calculate the fee using the corresponding month’s average IOER rate; rather, the calculation would revert to using a fixed rate of 0.25 percent, thus, negating the need to maintain the current floor of 0.00 percent.

Because the proposed change would not alter how the Maintenance Fee is currently allocated (i.e., charged) to Contributing Members, NSCC believes the fee would continue to be equitably allocated. More specifically, as mentioned above, the

¹⁶ 15 U.S.C. 78q-1(b)(3)(D).

¹⁷ 17 CFR.17Ad-22(e)(23)(ii).

¹⁸ 15 U.S.C. 78q-1(b)(3)(D).

Maintenance Fee is and would continue to be charged to all Contributing Members in proportion to the Contributing Member's average monthly cash deposit to the Clearing Fund. As such, and as is currently the case, Contributing Members that make greater use of NSCC's guaranteed services or which have activity in those services that present greater risk to NSCC would generally be subject to a larger Maintenance Fee because such Contributing Members would typically be required to maintain larger Clearing Fund deposits pursuant to the Rules.¹⁹ Conversely, Contributing Members that use NSCC's guaranteed services less or which have activity that presents less risk would generally be subject to a smaller Maintenance Fee because such Contributing Members would typically be required to maintain smaller Clearing Fund deposits pursuant to the Rules.²⁰ The proposed change to the Maintenance Fee would not adjust that allocation. For this reason, NSCC believes the Maintenance Fee would continue to be equitably allocated among Contributing Members.

Similarly, NSCC believes that the Maintenance Fee would continue to be a reasonable fee under the proposed change described above. For example, by using a fixed rate, instead of a rate that fluctuates with the IOER rate, Contributing Members should be better able to anticipate the cost of the fee. Meanwhile, a fixed rate would not only improve NSCC's ability to estimate revenue from the fee, but it also would stabilize the revenue received from the fee. As described above, greater stability in the revenue generated from the fee would help support NSCC's net income operating margin and, accordingly, its credit ratings, which are key factors in NSCC's costs, expenses, and

¹⁹ See Rule 4 and Procedure XV, supra note 5.

²⁰ Id.

funding. Additionally, using a fixed rate of 0.25 percent would help ensure that Contributing Members are not charged an amount greater than what was possible under the original and current calculation of the fee. Lastly, the proposed change would help establish consistent pricing between NSCC and its affiliates, DTC and FICC, regarding each of their respective Maintenance Fees, as concurrent proposals by DTC and FICC would result in the same calculation.²¹ For this reason, NSCC believes the Maintenance Fee would continue to be reasonable. Based on the forgoing, NSCC believes the proposed rule change to the Maintenance Fee is consistent with Section 17A(b)(3)(D) of the Act.²²

NSCC believes the proposed rule change to the “value out of the net” component of the Clearance Activity Fee would provide for the equitable allocation of reasonable fees. Because the proposed change would not alter how the Clearance Activity Fee is currently allocated (i.e., charged) to Members, NSCC believes the fee would continue to be equitably allocated. More specifically, as mentioned above, the “value out of the net” component of the Clearance Activity Fee is based on a Member’s daily aggregate market value of all settling CNS positions after netting. As such, and as is currently the case, Members that make greater use of NSCC’s guaranteed services would generally be subject to a larger Clearance Activity Fee because such Members would typically have higher value of net positions after netting. Conversely, Members that use NSCC’s guaranteed services less would generally be subject to a smaller Clearance Activity Fee because such Members would typically have lower value of net positions after netting.

²¹ See supra note 13.

²² 15 U.S.C. 78q-1(b)(3)(D).

The proposed change to the “value out of the net” component of the Clearance Activity Fee would not adjust that allocation. For this reason, NSCC believes the Clearance Activity Fee would continue to be equitably allocated among Members.

NSCC believes that the Clearance Activity Fee would continue to be a reasonable fee under the proposed change described above. This is because the proposed change to modify the “value out of the net” component of the Clearance Activity Fee is designed to offset NSCC’s increased costs and expenses while generating a low net income operating margin. As described above, in determining the appropriate level of the proposed change to modify the “value out of the net” component of the Clearance Activity Fee, NSCC considered a variety of factors, including expected Member activity, revenues, cost of funding, market volatility, and the financial markets more broadly. Based on that consideration, NSCC believes the proposed change would allow NSCC to assess a fee that is better aligned with NSCC’s increased costs and expenses. Having the ability to assess a fee that is better aligned with NSCC’s increased costs and expenses would further help support NSCC’s net income operating margin and, accordingly, its credit ratings, which are key factors in NSCC’s costs, expenses, and funding. For this reason, NSCC believes the Clearance Activity Fee would continue to be reasonable. Based on the forgoing, NSCC believes the proposed rule change to the “value out of the net” component of the Clearance Activity Fee is consistent with Section 17A(b)(3)(D) of the Act.²³

Rule 17Ad-22(e)(23)(ii) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide

²³

Id.

sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.²⁴ The proposed change would replace an outdated description of NSCC's past practice of adjusting Members' invoices with an updated description of its current rebate practice, which, when applicable, results in a reduction to the amount of fees a Member owes to NSCC. By updating the Fee Structure with a clear, transparent description of NSCC's current rebate practice, the proposed change would provide Members with sufficient information to evaluate the fees they may incur by participating in NSCC. Therefore, NSCC believes the proposed change would be consistent with the requirements of Rule 17Ad-22(e)(23)(ii).²⁵

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

NSCC does not believe that the proposed change to the Maintenance Fee would have an impact on competition among Contributing Members. As described above, the Maintenance Fee is charged ratably based on Contributing Members' use of NSCC's guaranteed services, as reflected in Contributing Members' deposits to the Clearing Fund. Thus, the fee is designed to be reflective of each Contributing Member's individual activity at NSCC. Additionally, NSCC does not believe reverting to a fixed rate of 0.25 percent in calculating the Maintenance Fee would have any impact on competition among Contributing Members because using such a rate means that Contributing Members still

²⁴ 17 CFR 240.17Ad-22(e)(23)(ii).

²⁵ Id.

cannot be assessed an amount greater than what could have been assessed under the original and current calculations of the fee.

However, appreciating that the value of a dollar is not consistent for each Contributing Member, if the change to no longer calculate the fee using the corresponding month's average IOER rate would create a competitive burden for a Contributing Member because the Contributing Member could be assessed a higher fee at a time when that IOER rate is lower than the proposed 0.25 percent fixed rate, NSCC believes such a burden would not be significant, given that the amount assessed would still be within the range of what could be assessed under the current calculation. Moreover, NSCC believes that any such burden would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.²⁶

The burden would be necessary because it is essential that NSCC continue to offset some of its costs and expenses with stable revenue generated from the Maintenance Fee, regardless of the economic environment. As described above, not doing so could adversely affect NSCC's credit ratings, which could further increase funding or, possibly, decrease the availability of crucial liquidity resources for NSCC. The burden would be appropriate because, as described above, the Maintenance Fee is calculated, using a balanced formula, to assess a fee that is reflective of the Contributing Member's use of NSCC's guaranteed services, so that NSCC can defray some of its costs and expenses in providing those services. More specifically, returning to a fixed rate of 0.25 percent would be appropriate because it is the same rate that was used prior to the change made in

²⁶ 15 U.S.C. 78q-1(b)(3)(I).

June 2020,²⁷ and it is currently the ceiling used in the existing calculation; thus, the new calculation still would not use a rate any higher than it could have previously.

NSCC believes the proposed rule change to modify the “value out of the net” component of the Clearance Activity Fee may have an impact on competition among its Members because the change would likely increase the fees of those Members that utilize NSCC’s guaranteed service when compared to their fees under the current Fee Structure. NSCC believes the proposed change could burden competition by negatively affecting such Members’ operating costs. While these Members may experience increases in their fees when compared to their fees under the current Fee Structure, NSCC does not believe the proposed change in and of itself mean that the burden on competition is significant. This is because even though the amount of the fee increase may seem significant (e.g., from \$2.12 to \$2.56 per million of settling value), NSCC believes the increase in fees would similarly affect all Members that utilize NSCC’s guaranteed services and would be reflective of each Member’s individual activity at NSCC, and therefore the burden on competition would not be significant. Regardless of whether the burden on competition is deemed significant, NSCC believes any burden that is created by this proposed change would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.²⁸

The burden would be necessary because it is essential that NSCC continue to offset some of its costs and expenses with revenue generated from the Clearance Activity Fee, regardless of the economic environment. As described above, not doing so could

²⁷ See June Filing, supra note 7.

²⁸ Id.

adversely affect NSCC's credit ratings, which could further increase funding or, possibly, decrease the availability of crucial liquidity resources for NSCC. The burden would be appropriate because, as described above, the Clearance Activity Fee is calculated, using a balanced formula, to assess a fee that is reflective of the Member's use of NSCC's guaranteed services, so that NSCC can defray some of its costs and expenses in providing those services. More specifically, NSCC believes the proposed rule change to modify the "value out of the net" component of the Clearance Activity Fee would be appropriate because it would allow NSCC to assess a fee that is better aligned with NSCC's increased costs and expenses while generating a low net income operating margin.

NSCC does not believe the proposed change to describe its current rebate practice would have any impact, or impose any burden, on competition among its Members. As described above, this proposed rule change would replace outdated information currently in the Fee Structure with an updated description of NSCC's current rebate practice. As described in the proposed language, under its current practice, rebates are allocated to eligible Members on a pro-rata basis based on such Members' gross fees paid to NSCC within the applicable rebate period. Therefore, the current practice is applied equally to all eligible Members. The proposed change to provide Members with transparency into this practice would not cause any increase or decrease in the rebates Members may receive. Therefore, this proposed rule change would not have any impact, or impose any burden, on competition.

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

Written comments relating to this proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁹ and paragraph (f) of Rule 19b-4 thereunder.³⁰ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSCC-2020-018 on the subject line.

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 17 CFR 240.19b-4(f).

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-2020-018. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (<http://dtcc.com/legal/sec-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-2020-018 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Secretary

³¹ 17 CFR 200.30-3(a)(12).

CONFIDENTIAL SUPPORTING INFORMATION FOR
PROPOSED RULE CHANGE SR-NSCC-2020-018

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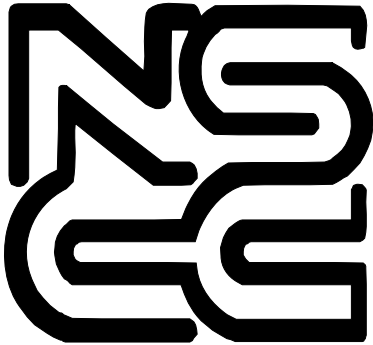
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NATIONAL
SECURITIES
CLEARING
CORPORATION

RULES & PROCEDURES

TEXT OF PROPOSED RULE CHANGE

Bold and underlined text indicates proposed added language.

~~Bold and strikethrough text~~ indicates proposed deleted language.

ADDENDUM A

[Changes to this Addendum A, as amended by File No. SR-NSCC-2020-018, are available at [dtcc.com/~media/Files/Downloads/legal/rule-filings/2020/NSCC/SR-NSCC-2020-018.pdf](https://www.dtcc.com/~media/Files/Downloads/legal/rule-filings/2020/NSCC/SR-NSCC-2020-018.pdf). These changes became effective upon filing with the Securities and Exchange Commission but have not yet been implemented. On January 1, 2021, these changes will be implemented and this legend will automatically be removed.]

NATIONAL SECURITIES CLEARING CORPORATION

FEE STRUCTURE

- II. **TRADE CLEARANCE FEES** - represents fees for trade recording, netting, issuance of instructions to receive or deliver, effecting book-entry deliveries, and related activity.
- A. Clearance Activity Fee – The sum of: (a) a “value into the net” fee of \$0.47 per million of processed value (i.e. for CNS and Balance Order netting, the sum of the contract amount and any CNS fail value), plus (b) a “value out of the net” fee of ~~\$2.12~~ **2.56** per million of settling value (i.e. the absolute value of the CNS Long and Short Positions).

V. PASS-THROUGH AND OTHER FEES

G.	Clearing Fund Maintenance Fee	A monthly fee calculated, in arrears, as the product of (A) the month’s average Interest Rate on Excess Reserves (IOER rate) determined by the Board of Governors of the Federal Reserve System, but at no time greater than 0.25% or less than 0.00%, and (B) the average of each Member’s (or Limited Member’s, if applicable) cash deposit balance in the Clearing Fund, as of the end of each day, for the month, multiplied by the number of days for that month and divided by 360.
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VIII. NSCC **PRICING REBATE** POLICY

~~The Corporation's policy is to retain only those revenues which are required to maintain an adequate revenue base in order to liquidate current production costs, provide for a continuance of product enhancements and development, provide for a discount when volume levels equal or exceed projections and provide for retained earnings as directed by the Board. In order to meet such objectives, the Corporation will:~~

~~If the Corporation's gross billable revenues before adjustment (i.e., revenues before discount) exceed the approximate level of costs, adjust downward (i.e., discount) participants' invoices.~~

~~If the Corporation's gross billable revenues before adjustment (i.e., revenues before surcharge) are less than the approximate level of costs, adjust upward (i.e., surcharge) participants' invoices.~~

~~Both the discount and the surcharge when applicable will be reflected directly on participants' invoices.~~

The Corporation may, in its discretion, provide Members with a rebate of its excess net income, where "excess net income" shall mean either income of the Corporation or income related to one business line of the Corporation, after application of expenses, capitalization costs, and applicable regulatory requirements.

All rebates shall be approved by the Board of Directors. In determining whether a rebate is appropriate, the Board of Directors may consider, among other things, the Corporation's regulatory capital requirements, anticipated expenses, investment needs, anticipated future expenses with respect to improvement or maintenance of the Corporation's operations, cash balances, financial projections, and appropriate level of shareholders' equity.

In the event the Board of Directors determines a rebate is appropriate, it shall determine a rebate period and a rebate payment date. Members maintaining membership during all or a portion of the applicable rebate period and on the rebate payment date shall be eligible for the rebate.

Rebates shall be applied to all eligible Members on a pro-rata basis based on such Members' gross fees paid to the Corporation within the applicable rebate period, excluding pass-through fees and interest earned on Required Fund Deposits. Rebates shall be applied to eligible Members' invoices on the rebate payment date as either a reduction in fees owed or, if fees owed are lower than the allocated rebate amount, a payment of such difference. Rebate amounts may be adjusted for miscellaneous charges and discounts.