

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="35"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2021"/> - * <input type="text" value="009"/>
Amendment No. (req. for Amendments *) <input type="text"/>		

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input 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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

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

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

Modify the Rules & Procedures of National Securities Clearing Corporation in Connection with the Implementation of Section 1446(f) of the Internal Revenue Code of 1986

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 *

Add Remove View

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

Add Remove View

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 is attached hereto as Exhibit 5 and consist of modifications to the Rules & Procedures (“Rules”)¹ of National Securities Clearing Corporation (“NSCC”) in connection with the implementation of section 1446(f) of the Internal Revenue Code of 1986, as amended, that was enacted as part of the Tax Cuts and Jobs Act of 2017,² and the Treasury Regulations or other official interpretations thereunder, as in effect from time to time (collectively “Section 1446(f)”), 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 Risk Committee of NSCC’s Board of Directors on June 15, 2021.

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 the Rules in connection with the implementation of Section 1446(f). The proposed rule change also includes technical changes.

(i) **BACKGROUND**

Section 1446(f) and Section 1446(f) Withholding

Section 1446(f) was enacted on December 22, 2017, as part of the Tax Cuts and Jobs Act of 2017,³ and the U.S. Treasury Department (“Treasury Department”) finalized and issued various implementing regulations on October 7, 2020,⁴ including the tax withholding required pursuant to Treasury Regulation Section 1.1446(f)-4(a)⁵ upon the transfer of an interest in a publicly traded partnership (“Section 1446(f) Withholding”). It is NSCC’s understanding that Section 1446(f) Withholding is designed to ensure any non-U.S. person (either individual or

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

² Public Law No. 115-97 (2017), section 864(c)(8).

³ Id.

⁴ Withholding of Tax and Information Reporting With Respect to Interests in Partnerships Engaged in a U.S. Trade or Business, 85 FR 76910 (Nov. 30, 2020).

⁵ 26 CFR §1.1446-4(a).

entity) appropriately files a U.S. federal income tax return following the sale or disposition of its interest in certain partnerships.

Section 1446(f) generally imposes a ten percent (10%) withholding tax on the payment of gross proceeds arising from the sale or other disposition by a non-U.S. person of an interest in certain partnerships that are engaged in a U.S. trade or business.⁶ In such a case, a tax withholding obligation is imposed on the buyer of the partnership interest, who is required to remit the withheld tax amount to the U.S. Internal Revenue Service (“IRS”), unless or to the extent an applicable exception applies.⁷ The buyer obligated to withhold the 10% tax is liable for any amount that it underwithheld, plus associated interest and penalties.⁸

On October 7, 2020, the IRS and Treasury Department issued final regulations under Section 1446(f) (the “Final Regulations”),⁹ which require Section 1446(f) Withholding on partnerships that are publicly traded on exchanges (“PTPs”) in respect of transfers that occur on or after January 1, 2022. The Final Regulations provided U.S. clearing organizations, such as NSCC, an exemption from the obligation to perform the Section 1446(f) Withholding at this time.¹⁰ This exemption is premised in part on the IRS and Treasury Department’s understanding that all of NSCC’s non-U.S. Members are of the types of entities that are permitted to perform the Section 1446(f) Withholding themselves.^{11,12} NSCC currently clears and settles all transactions on a netted basis. If NSCC were required to perform Section 1446(f) Withholding, NSCC would have to clear and settle transfers of PTP interest on a gross basis, which may be disruptive to the efficiency and liquidity of the trading of PTP interests in the capital markets, as noted in the Final Regulations.¹³

Currently, all of NSCC’s non-U.S. Members are of the types of entities permitted to perform the Section 1446(f) Withholding themselves either because (i) they are the types of entities allowed to perform U.S. tax withholdings pursuant to applicable Treasury Regulations or

⁶ I.R.C. Section 1446(f).

⁷ Id.

⁸ Id.

⁹ See note 4.

¹⁰ See note 4, at 76922.

¹¹ Id.

¹² The Final Regulations provided that if a direct clearing member of a U.S. clearing organization is not of a type of entity permitted to perform Section 1446(f) Withholding, the IRS and Treasury Department will issue proposed guidance that would revise the Final Regulations to require Section 1446(f) Withholding by U.S. clearing organization on such direct clearing member. Id.

¹³ See note 4, at 76922.

(ii) they have entered into the requisite agreements with the IRS that allow them to perform U.S. tax withholdings (commonly known as the Qualified Intermediary Agreements). Nearly all such Members have historically accepted the responsibility to perform all U.S. tax withholdings in respect of their NSCC accounts, and it is NSCC's understanding that they would continue do the same for Section 1446(f) Withholding.

(ii) PROPOSED RULE CHANGES

In order to comport with the legislative understanding underlying the Section 1446(f) Withholding exemption, NSCC is proposing amendments to its Rules to ensure that all NSCC FFI Members that are Members would accept the responsibility to perform the Section 1446(f) Withholding.¹⁴

Rule 1 (Definitions and Descriptions)

NSCC is proposing to add the following terms and definitions in Rule 1 (Definitions and Descriptions), as described below.

The term "Section 1446(f)" would mean section 1446(f) of the Code and the related Treasury Regulations or other official interpretations thereof, as in effect from time to time.

The term "Section 1446(f) Withholding" would mean the tax withholding required pursuant to Treasury Regulation Section 1.1446(f)-4(a), upon the transfer of an interest in a publicly traded partnership. As defined, "Section 1446(f) Withholding" would not apply to any tax withholding required on distributions made by such a partnership.

The term "Section 1446(f) Withholding Agent" would mean an FFI Member that is a Member and has certified to NSCC that Section 1446(f) Withholding would not apply to any Gross Credit Balance of such FFI Member by providing to NSCC a Tax Certification (as defined below and in the proposed rule text).

The term "Section 1446(f) Withholding Compliance Date" would mean January 1, 2022 or, if the commencement of Section 1446(f) Withholding is delayed beyond January 1, 2022 under Section 1446(f), two calendar months plus one calendar day before such delayed effective date.

NSCC is proposing to delete "FATCA Certification" and replace it with "Tax Certification." As proposed, the term "Tax Certification" would mean an executed copy of the relevant tax form required by the IRS, as in effect from time to time, that each Member and Limited Member (or applicant to become such) shall provide from time to time to NSCC as set forth under the Rules and Procedures.

¹⁴ It is NSCC's understanding that, based on the types of services that NSCC provides to Limited Members, notwithstanding any exemption, NSCC would not need to perform Section 1446(f) Withholding with respect to Limited Members' activities at NSCC.

NSCC is also proposing two technical changes. First, NSCC is proposing to delete “FATCA Compliance Date” from Rule 1 because it would no longer be used in the Rules under the proposal. Second, NSCC is proposing to delete the definition of “Code” that is currently embedded within the definition of “FATCA” and add it as a standalone definition entry in Rule 1 so that it can be readily identified.

Rule 2 (Members and Limited Members)

NSCC is proposing to retitle Section 4(iii) of Rule 2 (Members and Limited Members) from “FATCA” to “FATCA and Section 1446(f).”

NSCC is also proposing to delete a reference to FATCA Compliance Date in the first paragraph of Section 4(iii) of Rule 2 because it is no longer relevant given FATCA is already in effect. In addition, NSCC is proposing to add a paragraph to Section 4(iii) of Rule 2 to require that, beginning on the Section 1446(f) Withholding Compliance Date, each FFI Member that is a Member must agree not to conduct any transaction or activity through NSCC if such FFI Member is not a Section 1446(f) Withholding Agent, unless such requirement has been explicitly waived in writing by NSCC with respect to the specific FFI Member.¹⁵

In addition, NSCC is proposing to revise the last two paragraphs in Section 4(iii) of Rule 2 by changing FATCA Certification to Tax Certification, deleting a reference to FATCA, as well as adding references to Section 1446(f) Withholding Agent. As revised, each FFI Member is required to certify and periodically recertify to NSCC that such FFI Member is FATCA Compliant and/or a Section 1446(f) Withholding Agent, as applicable, by providing to NSCC a Tax Certification. In addition, an FFI Member shall indemnify NSCC for any loss, liability or expense sustained by NSCC as a result of such FFI Member failing to be FATCA Compliant or a Section 1446(f) Withholding Agent.

Rule 2A (Initial Membership Requirements)

NSCC is proposing to revise Section 1.B and 1.C of Rule 2A (Initial Membership Requirements) by including a reference to Section 1446(f) Withholding Agent and replacing FATCA Certification with Tax Certification, respectively. As proposed, Section 1.B of Rule 2A would provide that any applicant that shall be an FFI Member must be FATCA Compliant and/or a Section 1446(f) Withholding Agent, as applicable. In addition, as proposed, Section 1.C of Rule 2A would provide that, as part of its membership application, each applicant shall complete and deliver to NSCC a Tax Certification instead of a FATCA Certification. NSCC is also proposing a technical change by deleting an extraneous comma from Section 1.C of Rule 2A.

¹⁵ NSCC may waive this requirement from time to time with respect to a specific FFI Member if the FFI Member is unable to satisfy the requirement due to unusual and/or extraordinary circumstances, such as an unanticipated regulatory change in the tax withholding requirement or if the FFI Member is rectifying an unexpected change in its tax withholding status.

Rule 2B (Ongoing Membership Requirements and Monitoring)

NSCC is proposing to revise Section 2.B.(c) of Rule 2B (Ongoing Membership Requirements and Monitoring) by removing a reference to FATCA Compliance Date because it is no longer relevant given FATCA is already in effect. NSCC is also proposing to replace FATCA Certification with Tax Certification in Section 2.B.(c)(i) of Rule 2B and change two days to two calendar days in that section. Lastly, NSCC is proposing to add a new sentence to Section 2.B.(c) of Rule 2B that provides, beginning on the Section 1446(f) Withholding Compliance Date, each FFI Member that is a Member shall inform NSCC, both orally and in writing, if it has reason to know that it is not, or will not be, a Section 1446(f) Withholding Agent within two calendar days of knowledge thereof.

Rule 53 (Alternative Investment Product Services and Members)

NSCC is proposing to revise Sections 1(d)(iv) and 5(e)(i) of Rule 53 (Alternative Investment Product Services and Members) by replacing references of FATCA Certification with Tax Certification. In addition, NSCC is proposing to retitle Section 5(e) of Rule 53 as “Tax Considerations – AIP Settling Sub-Accounts.”

Addendum O (Admission of Non-US Entities as Direct NSCC Members)

NSCC is proposing to revise Addendum O (Admission of Non-U.S. Entities as Direct NSCC Members) to include requirements associated with Section 1446(f) Withholding. As proposed, NSCC would require each non-U.S. entity that is applying to become a Member or certain Limited Member to (i) agree not to conduct any transaction or activity through NSCC if the non-U.S. entity is not FATCA Compliant and/or is not a Section 1446(f) Withholding Agent, as applicable and (ii) indemnify NSCC for any loss, liability or expense sustained by NSCC as a result of the non-U.S. entity failing to be FATCA Compliant or a Section 1446(f) Withholding Agent. NSCC is also proposing to retitle the second bullet in Addendum O to “FACTA Compliance, Section 1446(f) Withholding, and Tax Certification.” In addition, NSCC is proposing to remove the reference to FATCA Compliance Date from the second bullet in Addendum O because it is no longer relevant given FATCA is already in effect. Furthermore, NSCC is proposing to revise the second bullet in Addendum O by (i) adding references to Section 1446(f) Withholding Compliance Date and Section 1446(f) Withholding Agent and (ii) replacing FATCA Certification with Tax Certification. As proposed, the second bullet in Addendum O would provide, in part, that each non-U.S. entity that is applying to become a Member or certain Limited Member must be at all times FATCA Compliant and, beginning on the Section 1446(f) Withholding Compliance Date, be a Section 1446(f) Withholding Agent, if applicable, and must certify and recertify to NSCC that it is FATCA Compliant and/or a Section 1446(f) Withholding Agent, as applicable, by providing to NSCC a Tax Certification, unless such requirements have been explicitly waived in writing by NSCC.

(iii) MEMBER OUTREACH

Beginning in December 2020, NSCC conducted ongoing outreach to non-U.S. Members that are not currently performing U.S. tax withholding in order to provide them with notice of the proposed changes. 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.

(b) Statutory Basis

NSCC believes this proposal is consistent with Section 17A(b)(3)(F)¹⁶ of the Securities Exchange Act of 1934 (“Act”) for the reasons described below.

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.¹⁷ NSCC believes that the proposed rule change to amend the Rules in connection with the implementation of Section 1446(f) is consistent with Section 17A(b)(3)(F) of the Act. This is because the proposed rule change is designed to ensure that all NSCC FFI Members that are Members would accept the responsibility to perform the Section 1446(f) Withholding, consistent with the understanding of the IRS and Treasury Department as expressed in the Final Regulations.¹⁸

As mentioned above, the Final Regulations provided NSCC an exemption from the obligation to perform Section 1446(f) Withholding at this time.¹⁹ However, the Final Regulations also provided that if a direct clearing member of a U.S. clearing organization is not of a type of entity permitted to perform Section 1446(f) Withholding, the IRS and Treasury Department will issue proposed guidance that would revise the Final Regulations to require Section 1446(f) Withholding by U.S. clearing organization, such as NSCC, on such direct clearing member.²⁰ If the IRS and Treasury Department were to revise the Final Regulations and revoke NSCC’s exemption, NSCC would be required to clear and settle each transfer of PTP interest on a gross basis in order to perform Section 1446(f) Withholding on such transfer. Given that NSCC currently clears and settles all transactions on a netted basis, if NSCC has to clear and settle transfers of PTP interest on a gross basis, it may be disruptive to the efficiency and liquidity of the trading of PTP interests in the capital markets, as noted in the Final Regulations.²¹

In order to be consistent with the understanding of the IRS and Treasury Department which NSCC’s Section 1446(f) exemption was premised upon,²² NSCC is proposing that, unless waived by NSCC, beginning on the Section 1446(f) Withholding Compliance Date, each FFI

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ Id.

¹⁸ See note 4, at 76922.

¹⁹ Id.

²⁰ Supra note 12.

²¹ See note 4, at 76922.

²² Id.

Member that is a Member would have to agree not to conduct any transaction or activity through NSCC if such FFI Member is not a Section 1446(f) Withholding Agent. In addition, each FFI Member that is a Member would have to provide periodic certifications to NSCC regarding its Section 1446(f) Withholding Agent status. Taken together, these requirements would help to ensure that all NSCC FFI Members that are Members would accept their responsibility to perform the Section 1446(f) Withholding (i.e., be a Section 1446(f) Withholding Agent).

By ensuring that all NSCC FFI Members that are Members would accept their responsibility to perform the Section 1446(f) Withholding, NSCC believes it would minimize the likelihood that the IRS and Treasury Department would revise the Final Regulations to revoke NSCC's Section 1446(f) exemption. Having the IRS and the Treasury Department continue to exempt NSCC from Section 1446(f) Withholding would enable NSCC to continue to clear and settle all transactions (including transfers of PTP interest) on a netted basis and avoid any potential disruption to the efficiency and liquidity of the trading of PTP interests in the capital market. By avoiding any potential disruption to the efficiency and liquidity of the trading of PTP interest in the capital market, the proposed rule change would help to promote the prompt and accurate clearance and settlement of transactions. As such, NSCC believes the proposed rule change to amend the Rules in connection with the implementation of Section 1446(f) is consistent with Section 17A(b)(3)(F) of the Act.²³

NSCC believes the proposal to make technical changes to the Rules is also consistent with Section 17A(b)(3)(F) of the Act.²⁴ The proposed technical changes to the Rules would help ensure that the Rules remain accurate and clear to Members. Having accurate and clear Rules would help Members to better understand their rights and obligations regarding NSCC's clearance and settlement services. NSCC believes that when Members better understand their rights and obligations regarding NSCC's clearance and settlement services, they can act in accordance with the Rules. NSCC believes that better enabling Members to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by NSCC. As such, NSCC believes the proposal to make technical changes to the Rules is consistent with Section 17A(b)(3)(F) of the Act.²⁵

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

NSCC believes that the proposed rule change to amend the Rules in connection with the implementation of Section 1446(f) could impose a burden on competition because the change could impose a cost on firms that currently do not do U.S. tax withholding by requiring them to perform the Section 1446(f) Withholding by the Section 1446(f) Withholding Compliance Date. However, NSCC believes any such burden is necessary and appropriate. Specifically, NSCC believes that any burden on competition that is created by the proposed rule change would be necessary in furtherance of the purposes of Section 17A(b)(3)(F) of the Act. As described above,

²³ 15 U.S.C. 78q-1(b)(3)(F).

²⁴ Id.

²⁵ Id.

the proposed rule change is designed to ensure that all NSCC FFI Members that are Members would accept the responsibility to perform the Section 1446(f) Withholding, consistent with the understanding of the IRS and Treasury Department as expressed in the Final Regulations.²⁶ By ensuring that all NSCC FFI Members that are Members would accept their responsibility to perform the Section 1446(f) Withholding, NSCC believes it would minimize the likelihood that the IRS and Treasury Department would revise the Final Regulations to revoke NSCC's Section 1446(f) exemption. Having the IRS and the Treasury Department continue to exempt NSCC from Section 1446(f) Withholding would enable NSCC to continue to clear and settle all transactions (including transfers of PTP interest) on a netted basis and avoid any potential disruption to the efficiency and liquidity of the trading of PTP interests in the capital market. By avoiding any potential disruption to the efficiency and liquidity of the trading of PTP interest in the capital market, the proposed rule change would help to promote the prompt and accurate clearance and settlement of transactions, consistent with Section 17A(b)(3)(F) of the Act.²⁷ NSCC also believes that any burden that is created by the proposed rule change would be appropriate. This is because the proposed change would be limited to Section 1446(f) Withholding and associated certification and is also consistent with the understanding of the IRS and Treasury Department as expressed in the Final Regulations.²⁸

NSCC does not believe the proposal to make technical changes to the Rules would impact competition. The changes would apply equally to all Members and would not affect Members' rights and obligations. As such, NSCC believes the proposal to make technical changes to the Rules would not have any impact 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

NSCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act²⁹ for Commission action.

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

- (a) Not applicable.

²⁶ See note 4, at 76922.

²⁷ 15 U.S.C. 78q-1(b)(3)(F).

²⁸ See note 4, at 76922.

²⁹ 15 U.S.C. 78s(b)(2).

- (b) Not applicable.
- (c) Not applicable.
- (d) Not applicable.

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

Not applicable.

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 – Not applicable.

Exhibit 4 – Not applicable.

Exhibit 5 – Proposed changes to the Rules.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-NSCC-2021-009)

[DATE]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change to Modify the Rules & Procedures of National Securities Clearing Corporation in Connection with the Implementation of Section 1446(f) of the Internal Revenue Code of 1986

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 July __, 2021, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of modifications to the Rules & Procedures (“Rules”)³ of NSCC in connection with the implementation of section 1446(f) of the Internal Revenue Code of 1986, as amended, that was enacted as part of the Tax Cuts and Jobs Act of 2017,⁴ and the Treasury Regulations or other official interpretations

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

⁴ Public Law No. 115-97 (2017), section 864(c)(8).

thereunder, as in effect from time to time (collectively “Section 1446(f)”), 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 the Rules in connection with the implementation of Section 1446(f). The proposed rule change also includes technical changes.

(i) **BACKGROUND**

Section 1446(f) and Section 1446(f) Withholding

Section 1446(f) was enacted on December 22, 2017, as part of the Tax Cuts and Jobs Act of 2017,⁵ and the U.S. Treasury Department (“Treasury Department”) finalized and issued various implementing regulations on October 7, 2020,⁶ including the tax

⁵ Id.

⁶ Withholding of Tax and Information Reporting With Respect to Interests in Partnerships Engaged in a U.S. Trade or Business, 85 FR 76910 (Nov. 30, 2020).

withholding required pursuant to Treasury Regulation Section 1.1446(f)-4(a)⁷ upon the transfer of an interest in a publicly traded partnership (“Section 1446(f) Withholding”). It is NSCC’s understanding that Section 1446(f) Withholding is designed to ensure any non-U.S. person (either individual or entity) appropriately files a U.S. federal income tax return following the sale or disposition of its interest in certain partnerships.

Section 1446(f) generally imposes a ten percent (10%) withholding tax on the payment of gross proceeds arising from the sale or other disposition by a non-U.S. person of an interest in certain partnerships that are engaged in a U.S. trade or business.⁸ In such a case, a tax withholding obligation is imposed on the buyer of the partnership interest, who is required to remit the withheld tax amount to the U.S. Internal Revenue Service (“IRS”), unless or to the extent an applicable exception applies.⁹ The buyer obligated to withhold the 10% tax is liable for any amount that it underwithheld, plus associated interest and penalties.¹⁰

On October 7, 2020, the IRS and Treasury Department issued final regulations under Section 1446(f) (the “Final Regulations”),¹¹ which require Section 1446(f) Withholding on partnerships that are publicly traded on exchanges (“PTPs”) in respect of transfers that occur on or after January 1, 2022. The Final Regulations provided U.S. clearing organizations, such as NSCC, an exemption from the obligation to perform the

⁷ 26 CFR §1.1446-4(a).

⁸ I.R.C. Section 1446(f).

⁹ Id.

¹⁰ Id.

¹¹ See note 6.

Section 1446(f) Withholding at this time.¹² This exemption is premised in part on the IRS and Treasury Department's understanding that all of NSCC's non-U.S. Members are of the types of entities that are permitted to perform the Section 1446(f) Withholding themselves.^{13,14} NSCC currently clears and settles all transactions on a netted basis. If NSCC were required to perform Section 1446(f) Withholding, NSCC would have to clear and settle transfers of PTP interest on a gross basis, which may be disruptive to the efficiency and liquidity of the trading of PTP interests in the capital markets, as noted in the Final Regulations.¹⁵

Currently, all of NSCC's non-U.S. Members are of the types of entities permitted to perform the Section 1446(f) Withholding themselves either because (i) they are the types of entities allowed to perform U.S. tax withholdings pursuant to applicable Treasury Regulations or (ii) they have entered into the requisite agreements with the IRS that allow them to perform U.S. tax withholdings (commonly known as the Qualified Intermediary Agreements). Nearly all such Members have historically accepted the responsibility to perform all U.S. tax withholdings in respect of their NSCC accounts, and it is NSCC's understanding that they would continue do the same for Section 1446(f) Withholding.

¹² See note 6, at 76922.

¹³ Id.

¹⁴ The Final Regulations provided that if a direct clearing member of a U.S. clearing organization is not of a type of entity permitted to perform Section 1446(f) Withholding, the IRS and Treasury Department will issue proposed guidance that would revise the Final Regulations to require Section 1446(f) Withholding by U.S. clearing organization on such direct clearing member. Id.

¹⁵ See note 6, at 76922.

(ii) **PROPOSED RULE CHANGES**

In order to comport with the legislative understanding underlying the Section 1446(f) Withholding exemption, NSCC is proposing amendments to its Rules to ensure that all NSCC FFI Members that are Members would accept the responsibility to perform the Section 1446(f) Withholding.¹⁶

Rule 1 (Definitions and Descriptions)

NSCC is proposing to add the following terms and definitions in Rule 1 (Definitions and Descriptions), as described below.

The term “Section 1446(f)” would mean section 1446(f) of the Code and the related Treasury Regulations or other official interpretations thereof, as in effect from time to time.

The term “Section 1446(f) Withholding” would mean the tax withholding required pursuant to Treasury Regulation Section 1.1446(f)-4(a), upon the transfer of an interest in a publicly traded partnership. As defined, “Section 1446(f) Withholding” would not apply to any tax withholding required on distributions made by such a partnership.

The term “Section 1446(f) Withholding Agent” would mean an FFI Member that is a Member and has certified to NSCC that Section 1446(f) Withholding would not apply to any Gross Credit Balance of such FFI Member by providing to NSCC a Tax Certification (as defined below and in the proposed rule text).

¹⁶ It is NSCC’s understanding that, based on the types of services that NSCC provides to Limited Members, notwithstanding any exemption, NSCC would not need to perform Section 1446(f) Withholding with respect to Limited Members’ activities at NSCC.

The term “Section 1446(f) Withholding Compliance Date” would mean January 1, 2022 or, if the commencement of Section 1446(f) Withholding is delayed beyond January 1, 2022 under Section 1446(f), two calendar months plus one calendar day before such delayed effective date.

NSCC is proposing to delete “FATCA Certification” and replace it with “Tax Certification.” As proposed, the term “Tax Certification” would mean an executed copy of the relevant tax form required by the IRS, as in effect from time to time, that each Member and Limited Member (or applicant to become such) shall provide from time to time to NSCC as set forth under the Rules and Procedures.

NSCC is also proposing two technical changes. First, NSCC is proposing to delete “FATCA Compliance Date” from Rule 1 because it would no longer be used in the Rules under the proposal. Second, NSCC is proposing to delete the definition of “Code” that is currently embedded within the definition of “FATCA” and add it as a standalone definition entry in Rule 1 so that it can be readily identified.

Rule 2 (Members and Limited Members)

NSCC is proposing to retitle Section 4(iii) of Rule 2 (Members and Limited Members) from “FATCA” to “FATCA and Section 1446(f).”

NSCC is also proposing to delete a reference to FATCA Compliance Date in the first paragraph of Section 4(iii) of Rule 2 because it is no longer relevant given FATCA is already in effect. In addition, NSCC is proposing to add a paragraph to Section 4(iii) of Rule 2 to require that, beginning on the Section 1446(f) Withholding Compliance Date, each FFI Member that is a Member must agree not to conduct any transaction or activity through NSCC if such FFI Member is not a Section 1446(f) Withholding Agent, unless

such requirement has been explicitly waived in writing by NSCC with respect to the specific FFI Member.¹⁷

In addition, NSCC is proposing to revise the last two paragraphs in Section 4(iii) of Rule 2 by changing FATCA Certification to Tax Certification, deleting a reference to FATCA, as well as adding references to Section 1446(f) Withholding Agent. As revised, each FFI Member is required to certify and periodically recertify to NSCC that such FFI Member is FATCA Compliant and/or a Section 1446(f) Withholding Agent, as applicable, by providing to NSCC a Tax Certification. In addition, an FFI Member shall indemnify NSCC for any loss, liability or expense sustained by NSCC as a result of such FFI Member failing to be FATCA Compliant or a Section 1446(f) Withholding Agent.

Rule 2A (Initial Membership Requirements)

NSCC is proposing to revise Section 1.B and 1.C of Rule 2A (Initial Membership Requirements) by including a reference to Section 1446(f) Withholding Agent and replacing FATCA Certification with Tax Certification, respectively. As proposed, Section 1.B of Rule 2A would provide that any applicant that shall be an FFI Member must be FATCA Compliant and/or a Section 1446(f) Withholding Agent, as applicable. In addition, as proposed, Section 1.C of Rule 2A would provide that, as part of its membership application, each applicant shall complete and deliver to NSCC a Tax Certification instead of a FATCA Certification. NSCC is also proposing a technical change by deleting an extraneous comma from Section 1.C of Rule 2A.

¹⁷ NSCC may waive this requirement from time to time with respect to a specific FFI Member if the FFI Member is unable to satisfy the requirement due to unusual and/or extraordinary circumstances, such as an unanticipated regulatory change in the tax withholding requirement or if the FFI Member is rectifying an unexpected change in its tax withholding status.

Rule 2B (Ongoing Membership Requirements and Monitoring)

NSCC is proposing to revise Section 2.B.(c) of Rule 2B (Ongoing Membership Requirements and Monitoring) by removing a reference to FATCA Compliance Date because it is no longer relevant given FATCA is already in effect. NSCC is also proposing to replace FATCA Certification with Tax Certification in Section 2.B.(c)(i) of Rule 2B and change two days to two calendar days in that section. Lastly, NSCC is proposing to add a new sentence to Section 2.B.(c) of Rule 2B that provides, beginning on the Section 1446(f) Withholding Compliance Date, each FFI Member that is a Member shall inform NSCC, both orally and in writing, if it has reason to know that it is not, or will not be, a Section 1446(f) Withholding Agent within two calendar days of knowledge thereof.

Rule 53 (Alternative Investment Product Services and Members)

NSCC is proposing to revise Sections 1(d)(iv) and 5(e)(i) of Rule 53 (Alternative Investment Product Services and Members) by replacing references of FATCA Certification with Tax Certification. In addition, NSCC is proposing to retitle Section 5(e) of Rule 53 as “Tax Considerations – AIP Settling Sub-Accounts.”

Addendum O (Admission of Non-US Entities as Direct NSCC Members)

NSCC is proposing to revise Addendum O (Admission of Non-U.S. Entities as Direct NSCC Members) to include requirements associated with Section 1446(f) Withholding. As proposed, NSCC would require each non-U.S. entity that is applying to become a Member or certain Limited Member to (i) agree not to conduct any transaction or activity through NSCC if the non-U.S. entity is not FATCA Compliant and/or is not a Section 1446(f) Withholding Agent, as applicable and (ii) indemnify NSCC for any loss, liability or expense sustained by NSCC as a result of the non-U.S. entity failing to be

FATCA Compliant or a Section 1446(f) Withholding Agent. NSCC is also proposing to retitle the second bullet in Addendum O to “FACTA Compliance, Section 1446(f) Withholding, and Tax Certification.” In addition, NSCC is proposing to remove the reference to FATCA Compliance Date from the second bullet in Addendum O because it is no longer relevant given FATCA is already in effect. Furthermore, NSCC is proposing to revise the second bullet in Addendum O by (i) adding references to Section 1446(f) Withholding Compliance Date and Section 1446(f) Withholding Agent and (ii) replacing FATCA Certification with Tax Certification. As proposed, the second bullet in Addendum O would provide, in part, that each non-U.S. entity that is applying to become a Member or certain Limited Member must be at all times FATCA Compliant and, beginning on the Section 1446(f) Withholding Compliance Date, be a Section 1446(f) Withholding Agent, if applicable, and must certify and recertify to NSCC that it is FATCA Compliant and/or a Section 1446(f) Withholding Agent, as applicable, by providing to NSCC a Tax Certification, unless such requirements have been explicitly waived in writing by NSCC.

(iii) MEMBER OUTREACH

Beginning in December 2020, NSCC conducted ongoing outreach to non-U.S. Members that are not currently performing U.S. tax withholding in order to provide them with notice of the proposed changes. 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.

2. Statutory Basis

NSCC believes this proposal is consistent with Section 17A(b)(3)(F)¹⁸ of the Act for the reasons described below.

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.¹⁹

NSCC believes that the proposed rule change to amend the Rules in connection with the implementation of Section 1446(f) is consistent with Section 17A(b)(3)(F) of the Act.

This is because the proposed rule change is designed to ensure that all NSCC FFI Members that are Members would accept the responsibility to perform the Section 1446(f) Withholding, consistent with the understanding of the IRS and Treasury Department as expressed in the Final Regulations.²⁰

As mentioned above, the Final Regulations provided NSCC an exemption from the obligation to perform Section 1446(f) Withholding at this time.²¹ However, the Final Regulations also provided that if a direct clearing member of a U.S. clearing organization is not of a type of entity permitted to perform Section 1446(f) Withholding, the IRS and Treasury Department will issue proposed guidance that would revise the Final Regulations to require Section 1446(f) Withholding by U.S. clearing organization, such as NSCC, on such direct clearing member.²² If the IRS and Treasury Department were to

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ Id.

²⁰ See note 6, at 76922.

²¹ Id.

²² Supra note 14.

revise the Final Regulations and revoke NSCC's exemption, NSCC would be required to clear and settle each transfer of PTP interest on a gross basis in order to perform Section 1446(f) Withholding on such transfer. Given that NSCC currently clears and settles all transactions on a netted basis, if NSCC has to clear and settle transfers of PTP interest on a gross basis, it may be disruptive to the efficiency and liquidity of the trading of PTP interests in the capital markets, as noted in the Final Regulations.²³

In order to be consistent with the understanding of the IRS and Treasury Department which NSCC's Section 1446(f) exemption was premised upon,²⁴ NSCC is proposing that, unless waived by NSCC, beginning on the Section 1446(f) Withholding Compliance Date, each FFI Member that is a Member would have to agree not to conduct any transaction or activity through NSCC if such FFI Member is not a Section 1446(f) Withholding Agent. In addition, each FFI Member that is a Member would have to provide periodic certifications to NSCC regarding its Section 1446(f) Withholding Agent status. Taken together, these requirements would help to ensure that all NSCC FFI Members that are Members would accept their responsibility to perform the Section 1446(f) Withholding (i.e., be a Section 1446(f) Withholding Agent).

By ensuring that all NSCC FFI Members that are Members would accept their responsibility to perform the Section 1446(f) Withholding, NSCC believes it would minimize the likelihood that the IRS and Treasury Department would revise the Final Regulations to revoke NSCC's Section 1446(f) exemption. Having the IRS and the Treasury Department continue to exempt NSCC from Section 1446(f) Withholding

²³ See note 6, at 76922.

²⁴ Id.

would enable NSCC to continue to clear and settle all transactions (including transfers of PTP interest) on a netted basis and avoid any potential disruption to the efficiency and liquidity of the trading of PTP interests in the capital market. By avoiding any potential disruption to the efficiency and liquidity of the trading of PTP interest in the capital market, the proposed rule change would help to promote the prompt and accurate clearance and settlement of transactions. As such, NSCC believes the proposed rule change to amend the Rules in connection with the implementation of Section 1446(f) is consistent with Section 17A(b)(3)(F) of the Act.²⁵

NSCC believes the proposal to make technical changes to the Rules is also consistent with Section 17A(b)(3)(F) of the Act.²⁶ The proposed technical changes to the Rules would help ensure that the Rules remain accurate and clear to Members. Having accurate and clear Rules would help Members to better understand their rights and obligations regarding NSCC's clearance and settlement services. NSCC believes that when Members better understand their rights and obligations regarding NSCC's clearance and settlement services, they can act in accordance with the Rules. NSCC believes that better enabling Members to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by NSCC. As such, NSCC believes the proposal to make technical changes to the Rules is consistent with Section 17A(b)(3)(F) of the Act.²⁷

²⁵ 15 U.S.C. 78q-1(b)(3)(F).

²⁶ Id.

²⁷ Id.

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

NSCC believes that the proposed rule change to amend the Rules in connection with the implementation of Section 1446(f) could impose a burden on competition because the change could impose a cost on firms that currently do not do U.S. tax withholding by requiring them to perform the Section 1446(f) Withholding by the Section 1446(f) Withholding Compliance Date. However, NSCC believes any such burden is necessary and appropriate. Specifically, NSCC believes that any burden on competition that is created by the proposed rule change would be necessary in furtherance of the purposes of Section 17A(b)(3)(F) of the Act. As described above, the proposed rule change is designed to ensure that all NSCC FFI Members that are Members would accept the responsibility to perform the Section 1446(f) Withholding, consistent with the understanding of the IRS and Treasury Department as expressed in the Final Regulations.²⁸ By ensuring that all NSCC FFI Members that are Members would accept their responsibility to perform the Section 1446(f) Withholding, NSCC believes it would minimize the likelihood that the IRS and Treasury Department would revise the Final Regulations to revoke NSCC's Section 1446(f) exemption. Having the IRS and the Treasury Department continue to exempt NSCC from Section 1446(f) Withholding would enable NSCC to continue to clear and settle all transactions (including transfers of PTP interest) on a netted basis and avoid any potential disruption to the efficiency and liquidity of the trading of PTP interests in the capital market. By avoiding any potential disruption to the efficiency and liquidity of the trading of PTP interest in the capital market, the proposed rule change would help to promote the prompt and accurate

²⁸ See note 6, at 76922.

clearance and settlement of transactions, consistent with Section 17A(b)(3)(F) of the Act.²⁹ NSCC also believes that any burden that is created by the proposed rule change would be appropriate. This is because the proposed change would be limited to Section 1446(f) Withholding and associated certification and is also consistent with the understanding of the IRS and Treasury Department as expressed in the Final Regulations.³⁰

NSCC does not believe the proposal to make technical changes to the Rules would impact competition. The changes would apply equally to all Members and would not affect Members' rights and obligations. As such, NSCC believes the proposal to make technical changes to the Rules would not have any impact 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

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

²⁹ 15 U.S.C. 78q-1(b)(3)(F).

³⁰ See note 6, at 76922.

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change

should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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-2021-009 on the subject line.

Paper Comments:

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

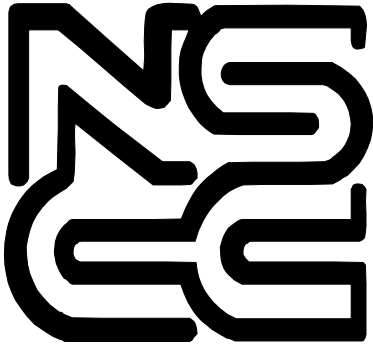
All submissions should refer to File Number SR-NSCC-2021-009. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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-2021-009 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).



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.

RULE 1. DEFINITIONS AND DESCRIPTIONS

Code

The term “Code” means the Internal Revenue Code of 1986, as amended.

FATCA

The term “FATCA” means (i) the provisions of sections 1471 through 1474 of the ~~Internal Revenue Code of 1986, as amended, (the “Code”)~~ that were implemented as part of The Foreign Account Tax Compliance Act (or any amendment thereto or successor sections thereof), and the related Treasury Regulations or other official interpretations thereof, as in effect from time to time, and (ii) the provisions of any intergovernmental agreement to implement The Foreign Account Tax Compliance Act as in effect from time to time between the United States and the jurisdiction of the FFI Member’s (or applicant’s) residency.

FATCA Certification

~~The term “FATCA Certification” means an executed copy of the relevant tax form required by the Internal Revenue Service under FATCA, as in effect from time to time, that each Member and Limited Member (or applicant to become such) shall provide from time to time to the Corporation as set forth under these Rules.~~

FATCA Compliance Date

~~The term “FATCA Compliance Date” shall mean, as applicable, either (i) January 1, 2014, with respect to any FFI Member approved for membership by the Corporation on January 1, 2014 or thereafter (or, if the commencement of all FATCA withholding with respect to such FFI Members is delayed beyond January 1, 2014 under FATCA, two calendar months plus one day before such delayed effective date), or (ii) May 1, 2014, with respect to any FFI Member approved for membership by the Corporation at any time prior to January 1, 2014 (or, if the commencement of all FATCA withholding with respect to such FFI Members is delayed beyond July 1, 2014 under FATCA, two calendar months plus one day before such delayed effective date).~~

Section 1446(f)

The term “Section 1446(f)” means section 1446(f) of the Code and the related Treasury Regulations or other official interpretations thereof, as in effect from time to time.

Section 1446(f) Withholding

The term “Section 1446(f) Withholding” means the tax withholding required pursuant to Treasury Regulation Section 1.1446(f)-4(a), upon the transfer of an interest in a publicly traded partnership.

Section 1446(f) Withholding Agent

The term “Section 1446(f) Withholding Agent” means an FFI Member that is a Member and has certified to the Corporation that Section 1446(f) Withholding would not apply to any Gross Credit Balance of such FFI Member by providing to the Corporation a Tax Certification.

Section 1446(f) Withholding Compliance Date

The term “Section 1446(f) Withholding Compliance Date” means January 1, 2022 or, if the commencement of Section 1446(f) Withholding is delayed beyond January 1, 2022 under Section 1446(f), two calendar months plus one calendar day before such delayed effective date.

Tax Certification

The term “Tax Certification” means an executed copy of the relevant tax form required by the Internal Revenue Service, as in effect from time to time, that each Member and Limited Member (or applicant to become such) shall provide from time to time to the Corporation as set forth under these Rules and Procedures.

RULE 2. MEMBERS AND LIMITED MEMBERS

SEC 4. Compliance with Applicable Law

(iii) FATCA and Section 1446(f)

~~Beginning on the FATCA Compliance Date, each~~ Each FFI Member must agree not to conduct any transaction or activity through the Corporation if such FFI Member is not FATCA Compliant, unless such requirement has been explicitly waived in writing by the Corporation with respect to the specific FFI Member, provided, however, that no such waiver will be issued if it shall cause the Corporation to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property.

Beginning on the Section 1446(f) Withholding Compliance Date, each FFI Member that is a Member must agree not to conduct any transaction or activity through the Corporation if such FFI Member is not a Section 1446(f) Withholding Agent, unless such requirement has been explicitly waived in writing by the Corporation with respect to the specific FFI Member.

~~All~~ Each FFI Members ~~are is~~ required, ~~as applicable under FATCA,~~ to certify and periodically recertify to the Corporation that ~~they are~~ such FFI Member is FATCA Compliant and/or a Section 1446(f) Withholding Agent, as applicable, by providing to the Corporation a FATCA Tax Certification. Failure to do so in the manner and timeframes set forth by the Corporation from time to time will result in a fine, unless such requirement has been explicitly waived in writing by the Corporation with respect to the specific FFI Member, provided, however, that no such waiver will be issued if it shall cause the Corporation to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property.

An FFI Member shall indemnify the Corporation for any loss, liability or expense sustained by the Corporation as a result of such FFI Member failing to be FATCA Compliant or a Section 1446(f) Withholding Agent.

RULE 2A. INITIAL MEMBERSHIP REQUIREMENTS

SEC. 1. ELIGIBILITY FOR MEMBERSHIP

In furtherance of the Corporation's rights and authority to establish standards for membership, the Corporation shall establish, as it deems necessary or appropriate, standards of financial responsibility, operational capability, experience and competence for membership applicable to Members and to Limited Members. The Corporation shall also establish guidelines for the application of such membership standards.

A. Qualifications

A Person shall be qualified to become a participant if it satisfies the qualifications for membership applicable to its membership type, as set forth in Addendum B of these Rules.

B. Membership Standards

The Corporation shall approve a membership application only upon a determination by the Corporation that the applicant meets the qualifications and financial, operational and other standards applicable to its membership type as set forth in Addendum B of these Rules, or such other qualifications and standards as the Corporation may promulgate.¹ In addition, with regard to any applicant that shall be an FFI Member, such applicant must be FATCA Compliant **and/or a Section 1446(f) Withholding Agent, as applicable.**

C. Application Documents

Each applicant shall, as required by the Corporation from time to time, complete and deliver to the Corporation an Applicant Questionnaire in such form as prescribed by the Corporation from time to time and shall provide such other reports, opinions, financial and other information as the Corporation may determine are appropriate for each membership type.

As part of its membership application, each applicant (as determined by the Corporation with regard to membership type) shall complete and deliver to the Corporation (1) a **FATCA Tax** Certification, and (2) a Cybersecurity Confirmation.

¹ Pursuant to its authority, the Corporation has established (i) a policy statement on the admission of non-U.S. entities as Members, Mutual Fund/Insurance Services Members, Fund Members and Insurance Carrier/Retirement Services Members, which policy statement is set forth as Addendum O to these Rules and (ii) guidelines with regard to character and other considerations that are reflected in subsection G of this Rule.

RULE 2B. ONGOING MEMBERSHIP REQUIREMENTS AND MONITORING

SEC. 2. DATA TO BE FILED WITH THE CORPORATION

B. Notification of Changes in Condition

(c) ~~Beginning on the FATCA Compliance Date, each~~ **Each** FFI Member shall inform the Corporation, both orally and in writing, if it (i) undergoes a change in circumstance that would affect its **FATCA Tax** Certification or (ii) otherwise has reason to know that it is not, or will not be, FATCA Compliant, in each case, within two **calendar** days of knowledge thereof. **In addition, beginning on the Section 1446(f) Withholding Compliance Date, each FFI Member that is a Member shall inform the Corporation, both orally and in writing, if it has reason to know that it is not, or will not be, a Section 1446(f) Withholding Agent within two calendar days of knowledge thereof.**

RULE 53. ALTERNATIVE INVESTMENT PRODUCT SERVICES AND MEMBERS

SEC. 1. General

(d) In the Corporation's sole and absolute discretion, and in accordance with such procedures as the Corporation may establish as it deems necessary or appropriate from time to time, the Corporation may permit AIP Fund Administrators to create one or more sub-accounts approved by the Corporation to settle AIP Payments at the sub-account level ("AIP Settling Sub-Accounts"). All matters, activities, liabilities and obligations under these Rules with respect to any AIP Settling Sub-Account, except for settlement of AIP Payments, shall be the responsibility of the respective AIP Fund Administrator.

(iv) Tax documentation from the applicable AIP Non-Member Fund in such form as required by the Corporation from time to time. With respect to any AIP Non-Member Fund that is treated as a non-U.S. entity for U.S. federal income tax purposes, the AIP Fund Administrator shall provide the Corporation with an executed **FATCA Tax** Certification from such AIP Non-Member Fund.

SEC. 5. Obligations and Rights applicable to AIP Member

(e) **FATCA Tax** Considerations – AIP Settling Sub-Accounts

(i) AIP Fund Administrators with AIP Settling Sub-Accounts shall be responsible for obtaining such tax documentation from their applicable AIP Non-Member Funds as requested by the Corporation from time to time. With respect to AIP Non-Member Funds that are treated as non-U.S. entities for U.S. federal income tax purposes, the applicable AIP Fund Administrator shall be responsible for obtaining the necessary **FATCA Tax** Certifications as requested by the Corporation from time to time. Notwithstanding any other provision of these Rules, failure to provide such tax documentation, including **FATCA Tax** Certifications to the extent applicable, in the manner and timeframes set forth by the Corporation from time to time will result in revocation of the Corporation's approval, in the Corporation's sole and absolute discretion, for such AIP Non-Member Fund to settle AIP Payments through AIP.

ADDENDUM O

ADMISSION OF NON-U.S. ENTITIES AS DIRECT NSCC MEMBERS

Admission of Non-U.S. Entities¹

Requirements in addition to standard requirements for U.S. entities:

- Undertakings and Agreements –

At a minimum such non-U.S. entity would have to agree to:

- (e) not conduct any transaction or activity through NSCC if the non-U.S. entity is not FATCA Compliant **and/or is not a Section 1446(f) Withholding Agent, as applicable**, unless such requirement has been explicitly waived in writing by NSCC with respect to the specific non-U.S. entity, provided, however, that no such waiver will be issued if it shall cause NSCC to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property.
- (f) indemnify NSCC for any loss, liability or expense sustained by NSCC as a result of the non-U.S. entity failing to be FATCA Compliant **or a Section 1446(f) Withholding Agent**.
- FATCA Compliance, **Section 1446(f) Withholding**, and **FATCA Tax Certification** – ~~Beginning on the FATCA Compliance Date, the~~ **The** non-U.S. entity must be at all times FATCA Compliant **and, beginning on the Section 1446(f) Withholding Compliance Date, be a Section 1446(f) Withholding Agent, if applicable**, and must certify and periodically recertify to NSCC, ~~as applicable under FATCA~~, that it is FATCA Compliant **and/or a Section 1446(f) Withholding Agent, as applicable**, by providing to NSCC a **FATCA Tax Certification**, unless such requirements have been explicitly waived in writing by NSCC, provided, however, that no such waiver will be issued if it shall cause NSCC to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property.

¹ This policy statement excludes non-U.S. entities that are insurance companies.