

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-93671; File No. SR-NSCC-2021-012)

November 24, 2021

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Make Certain Revisions and Clarifications to the Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 15, 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. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4) thereunder.<sup>4</sup> 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 NSCC’s Rules & Procedures (“Rules”) to (1) clarify defined terms related to the onboarding agreements required to be provided by Settling Banks and AIP Settling Banks; (2) incorporate in the Rules the affirmative undertakings that Members currently make in onboarding membership agreements; (3) clarify that Members shall appoint a duly authorized

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4).

representative in connection with their membership, and remove the requirement that NSCC approve the form of power of attorney or resolutions of the Member's board of directors that evidences such authorization; (4) clarify NSCC's ability to rely on electronic signatures on agreements and other documents provided to NSCC pursuant to the Rules; and (5) incorporate into the Rules the governing law of agreements and other documents provided to NSCC pursuant to the Rules, as described in greater detail below.<sup>5</sup>

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

NSCC is proposing amendments that would clarify, simplify and improve the disclosures in the Rules, primarily related to onboarding and other membership documentation between NSCC and its Members. NSCC, along with its affiliates, The Depository Trust Company and Fixed Income Clearing Corporation, has recently

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<sup>5</sup> Capitalized terms not defined herein are defined in the Rules, available at <https://www.dtcc.com/legal/rules-and-procedures>. NSCC has several types of membership with different access levels to services, each described in Rule 2, id. For ease of description, unless otherwise indicated by the context, the term "Member" is used to refer to all membership categories.

completed a review of the templates of onboarding agreements and other documents that are provided to NSCC in connection with a firm's application for membership and the templates of agreements and documents Members may provide to NSCC during the course of their membership pursuant to the Rules. In connection with this review, NSCC is proposing to make certain revisions and clarifications to the Rules.

More specifically, the proposed rule changes would (1) clarify defined terms related to the onboarding agreements required to be provided by Settling Banks and AIP Settling Banks; (2) incorporate in the Rules the affirmative undertakings that Members currently make in onboarding membership agreements; (3) clarify that Members shall appoint a duly authorized representative in connection with their membership, and remove the requirement that NSCC approve the form of power of attorney or resolutions of the Member's board of directors that evidences such authorization; (4) clarify NSCC's ability to rely on electronic signatures on agreements and other documents provided to NSCC pursuant to the Rules; and (5) incorporate into the Rules the governing law of agreements and other documents provided to NSCC pursuant to the Rules, as described in greater detail below.

*Proposed Revisions to Clarify the Defined Terms Related to Settling Bank Agreements*

NSCC is proposing to revise Rule 1 (Definitions and Descriptions) to clarify the defined terms related to the onboarding agreements required to be provided by Settling Banks and AIP Settling Banks. Settling Banks and AIP Settling Banks are types of

NSCC membership that undertake to perform settlement services on behalf of other Members.<sup>6</sup>

Currently, the definition of “Settling Bank” in Rule 1 states that these Members are party to both an “Appointment of Settling Bank” and “Settling Bank Agreement,” and the definition of “AIP Settling Bank” in Rule 1 states that these Members are party to both an “Appointment of AIP Settling Bank” and “AIP Settling Bank Agreement.” However, there are no separate definitions of the terms “Appointment of Settling Bank,” “Settling Bank Agreement,” “Appointment of AIP Settling Bank” or “AIP Settling Bank Agreement.” Furthermore, NSCC does not currently require these types of Members to submit separate documents to evidence an appointment and an agreement. Rather, under NSCC’s current practice, Settling Banks and AIP Settling Banks are required to be party to an effective agreement, which includes both the appointment of the Settling Bank or AIP Settling Bank and their affirmative undertaking to perform settlement services for another Member that is also party to that agreement.

Therefore, NSCC is proposing to amend the definitions of Settling Bank and AIP Settling Bank in Rule 1 to refer only to a Settling Bank Agreement and to add a definition of “Settling Bank Agreement” to Rule 1, to clarify that this agreement includes both the appointment of the Settling Bank or AIP Settling Bank and their affirmative undertaking to perform settlement services for another Member that is also party to that agreement. The proposed rule change would clarify the definitions of these membership types and

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<sup>6</sup> Settling Bank and AIP Settling Bank membership types are described in Sections 2(ii)(f) and (i) of Rule 2, id.

conform the description of their membership documentation requirements in the Rules to NSCC's current practice.

In connection with this proposed change and also to conform the Rules to NSCC's current practice, NSCC would also amend Rule 53 (Alternative Investment Product Services and Members) to refer to the Settling Bank Agreement among the required documentation to establish AIP Settling Sub-Accounts in Section 1(d) and would revise a reference to an "AIP Settling Bank Agreement" to refer to the proposed "Settling Bank Agreement" in Section 7(h).

*Proposed Revisions to Incorporate Member Undertakings into the Rules*

NSCC is proposing to revise Section 1.E of Rule 2A (Initial Membership Requirements) to incorporate affirmative undertakings that Members currently make in their onboarding membership agreements.<sup>7</sup> This section currently provides that an applicant for membership with NSCC shall sign and deliver to NSCC an agreement under which the applicant would agree to the affirmative undertakings that are listed in this Section 1.E of Rule 2A.<sup>8</sup> These undertakings include, for example, to abide by the Rules and be bound by all the provisions thereof, and to pay any amounts that become payable by the Member to NSCC pursuant to the Rules.<sup>9</sup>

To simplify and standardize the membership onboarding documentation, NSCC is proposing to revise Section 1.E of Rule 2A to state directly that Members agree to each of the undertakings listed in that section. In connection with this proposed change,

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<sup>7</sup> Section 1.E of Rule 2A, id.

<sup>8</sup> Id.

<sup>9</sup> See Sections 1.E(e) and (h) of Rule 2A, id.

NSCC would remove these undertakings from the template membership agreement, which already provides that Members are bound by the Rules.

In connection with this proposed change, NSCC would also make identical revisions to statements within Section 1.E of Rule 2A regarding the undertakings of other membership types, including (i) footnotes 2 and 3 regarding Fund Members, (ii) a statement in subsection 1 that refers to undertakings of Members that are Municipal Securities Brokers' Brokers, (iii) a statement in subsection 2 that refers to the onboarding obligations of Third Party Administrator Members, Third Party Provider Members and Investment Manager/Agent Members, and (iv) a statement regarding the onboarding obligations of Settling Bank Only Members and Municipal Comparison Only Members.

*Proposed Revisions to Requirements Related to Members' Authorized Representatives*

NSCC is proposing to revise Section 2 of Rule 5 (General Provisions), which describes Members' requirement to appoint an authorized representative in connection with their membership with NSCC.<sup>10</sup> Currently, Section 2 of Rule 5 provides that a Member may designate an authorized representative that is not either a general partner or an officer of the Member by either a power of attorney or resolutions of the Member's board of directors, and requires such power of attorney and resolutions be in a form approved by NSCC.<sup>11</sup> Section 2 of Rule 5 also requires Members to provide NSCC with

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<sup>10</sup> Section 2 of Rule 5, id.

<sup>11</sup> Id.

the signatures of individuals who are authorized representatives for purposes of conducting business with NSCC.<sup>12</sup>

In order to simplify the onboarding membership requirements, NSCC is proposing to amend Section 2 of Rule 5 to clarify that Members must appoint a duly authorized representative, and to remove references to a power of attorney or resolutions of the Member's board of directors. The proposed change would also remove the requirement that NSCC approve the form of power of attorney or resolutions of the Member's board of directors that evidences the due authorization of that representative. Finally, NSCC is proposing to remove the requirement that Members provide NSCC with the signatures of representatives who are authorized to conduct business with NSCC.<sup>13</sup>

*Proposed Revisions to Rules Regarding NSCC's Reliance on Electronic Signatures*

NSCC is proposing to revise Rule 32 (Signatures), which lists the circumstances in which NSCC would rely on an electronic signature.<sup>14</sup> The proposed revision to this Rule 32 would revise the rule to clarify that NSCC may rely on an electronic signature with respect to any and all agreements and other documents delivered pursuant to the Rules. In connection with this change, NSCC would also remove reference to the circumstances in which it would accept an electronic signature, to make clear that NSCC would do so in any circumstances. The proposed revisions would clarify and modernize the language in Rule 32, which still refers to outdated modes of electronic

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<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

communication, such as telex, and would align the language in this Rule to language used in the New York Electronic Signatures and Records Act.<sup>15</sup>

*Proposed Revisions to Rules Regarding Governing Law*

NSCC is proposing to revise Section 1 of Rule 38 (Governing Law and Captions), which currently states that the Rules are governed by New York law.<sup>16</sup> The proposed change would revise Section 1 of Rule 38 to include a statement that all agreements and other documents that are entered into between NSCC and its Members are also governed by New York law, unless otherwise expressly provided. Currently, agreements and other documents entered into between NSCC and its Members either include a governing law provision or are governed by New York law through the application of both Section 1 of Rule 38, which provides that the rights and obligations under the Rules are governed by New York law, and the NSCC membership agreements, which provide that the Rules (including Section 1 of Rule 38) govern the matters and transactions between NSCC and its Members.

This proposed change would both clarify the governing law of the agreements and other documents entered into between NSCC and its Members pursuant to the Rules, and would allow NSCC to simplify those documents by removing the governing law provisions in such documents.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires that the rules of NSCC be designed to, among other things, promote the prompt and accurate clearance and settlement of

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<sup>15</sup> N.Y. State Tech. Law § 304(2) (McKinney 2021).

<sup>16</sup> Supra note 5.

securities transactions.<sup>17</sup> NSCC believes the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act because such changes would clarify and improve the transparency of the Rules and would allow NSCC to simplify the membership agreements and other documentation provided to it by Members pursuant to the Rules.

More specifically, the proposed changes would make clarifications to the Rules regarding (i) defined terms related to the onboarding agreements required to be provided by Settling Banks and AIP Settling Banks; (ii) Members' duly authorized representatives in connection with their memberships; and (iii) NSCC's ability to rely on electronic signatures on agreements and other documents provided to it pursuant to the Rules. The proposed changes would also update the Rules in order to allow NSCC to simplify the onboarding and other membership agreements and documents by incorporating in the Rules (1) the governing law of agreements and other documents provided to NSCC pursuant to the Rules; and (2) the affirmative undertakings that Members currently make in onboarding membership agreements.

By enhancing the clarity and transparency of the Rules, and allowing NSCC to simplify the membership agreements and other documents, the proposed changes would allow Participants to more efficiently and effectively conduct their business in accordance with the Rules, which NSCC believes would promote the prompt and

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<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(F).

accurate clearance and settlement of securities transactions. As such, NSCC believes that the proposed changes would be consistent with Section 17A(b)(3)(F) of the Act.<sup>18</sup>

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

NSCC does not believe the proposed rule changes would impact competition. The proposed rule changes would merely enhance the clarity and transparency of the Rules and would simplify the documentation that is provided to NSCC by Members pursuant to the Rules. Therefore, the proposed changes would not affect NSCC's operations or the rights and obligations of membership. As such, NSCC believes the proposed rule changes 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

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submit>

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<sup>18</sup> Id.

comments. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at [tradingandmarkets@sec.gov](mailto:tradingandmarkets@sec.gov) or 202-551-5777.

NSCC reserves the right to not respond to any comments received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>19</sup> of the Act and paragraph (f)<sup>20</sup> of Rule 19b-4 thereunder. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2021-012 on the subject line.

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<sup>19</sup> 15 U.S.C 78s(b)(3)(A).

<sup>20</sup> 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-2021-012. 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-2021-012 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.<sup>21</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).