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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2021 - \* 013

Amendment No. (req. for Amendments \*)

Filing by National Securities Clearing Corporation

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

**Section 806(e)(2) \***

**Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934**  
**Section 3C(b)(2) \***

**Exhibit 2 Sent As Paper Document**

**Exhibit 3 Sent As Paper Document**

**Description**

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

Provide for a passive acknowledgment process, codify certain settlement processes and make technical, clarifying and conforming changes to the NSCC Rules

**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 \*** [Redacted] **Last Name \*** [Redacted]

**Title \*** [Redacted]

**E-mail \*** RuleFilingAdmin@dtcc.com

**Telephone \*** [Redacted] **Fax** [Redacted]

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, National Securities Clearing Corporation has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

**Date** 11/18/2021

(Title \*)

**By** [Redacted]

[Redacted]

(Name \*)

[Redacted]

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

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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Narrative - (SR-NSCC-2021-013) Pas

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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Exhibit 1A - (SR-NSCC-2021-013) Pa

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 Advanced 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 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**

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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 Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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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 Sent As Paper Document

**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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Exhibit 5 - (SR-NSCC-2021-013).docx

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 and would amend the NSCC Rules & Procedures (“Rules”)<sup>1</sup> in order to (i) provide for a passive acknowledgment process whereby any settling bank that does not timely acknowledge that it will settle its settlement balance with NSCC (i.e., acknowledge its intention to pay to or collect from NSCC), or refuse to settle for one or more Members or Limited Members (collectively, “NSCC Members”) or AIP Non-Member Funds for which it is the designated Settling Bank or AIP Settling Bank (collectively, “NSCC Settling Banks”) and has not otherwise been in contact with NSCC, would be deemed to have acknowledged its settlement balances, (ii) amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category, (iii) codify certain settlement processes and (iv) make certain technical, clarifying and conforming changes.

(b) Not applicable.

(c) Not applicable.

## 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Businesses, Technology & Operations Committee of NSCC’s Board of Directors on September 15, 2020.

## 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 (i) provide for a passive acknowledgment process whereby any settling bank that does not timely acknowledge that it will settle its settlement balance with NSCC (i.e., acknowledge its intention to pay to or collect from NSCC), or refuse to settle for one or more NSCC Members or AIP Non-Member Funds for which it is the designated NSCC Settling Bank and has not otherwise been in contact with NSCC, would be deemed to have acknowledged its settlement balances, (ii) amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category, (iii) codify certain settlement processes and (iv) make certain technical, clarifying and conforming changes.

### **Background**

#### ***NSCC Membership; Settling Banks and AIP Settling Banks – Settlement Processes***

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<sup>1</sup> Capitalized terms not defined herein are defined in the Rules, available at [https://www.dtcc.com/~media/Files/Downloads/legal/rules/nscc\\_rules.pdf](https://www.dtcc.com/~media/Files/Downloads/legal/rules/nscc_rules.pdf).

NSCC membership consists of Members that have access to NSCC’s guaranteed central counterparty services and Limited Members that have access to NSCC’s non-guaranteed services, such as Mutual Fund Services and Alternative Investment Product Services (“AIP”).<sup>2</sup> Limited Members that only have access to AIP are referred to as AIP Members.<sup>3</sup> For purposes of this filing, all Members and Limited Members, including AIP Members, are referred to collectively as NSCC Members. AIP Non-Member Funds are entities that are not AIP Members but that NSCC has approved to settle AIP Payments as described in Rule 53.<sup>4</sup>

NSCC provides a standardized, automated method for money settlement obligations, between NSCC and NSCC Settling Banks acting on behalf of NSCC Members and AIP Non-Member Funds. NSCC’s settlement services eliminate manual processing and reduce costs by aggregating the money settlement payments due to or from an NSCC Member or AIP Non-Member Fund, and then, automatically debiting or crediting such NSCC Member’s account or AIP Non-Member Fund’s account at its NSCC Settling Bank. Money settlement is effected via the Federal Reserve Banks’ (“FRB”) National Settlement Service (“NSS”).<sup>5</sup>

NSCC provides two separate settlement processes – (i) end of day settlement for Members and Limited Members other than AIP Members (“EOD Settlement”) and (ii) daily settlement for AIP Members and AIP Non-Member Funds (“AIP Settlement”). Both settlement processes require each NSCC Member or AIP Non-Member Fund to designate a settling bank to effect money settlement on its behalf at NSCC.<sup>6</sup> Settling Banks settle on behalf of Members and Limited Members with respect to EOD Settlement and AIP Settling Banks settle on behalf of AIP Members and AIP Non-Member Funds with respect to AIP Settlement. All AIP money settlement is effected on a gross basis, where on the applicable settlement date, AIP debits are collected first, and in the afternoon all contra-side credits, where the corresponding debits have been collected, are paid.<sup>7</sup>

Each NSCC Settling Bank is required by the NSCC Rules to enter into a settling bank agreement with the NSCC Member or AIP Non-Member Fund on whose behalf it settles and to abide by the Rules.<sup>8</sup> The Rules require Settling Banks to acknowledge to NSCC their settlement balances and their intention to settle with NSCC or their refusal to settle by the settlement

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<sup>2</sup> See Section 2 of Rule 2, supra note 1.

<sup>3</sup> Id.

<sup>4</sup> Definition of “AIP Non-Member Fund” in Rule 1, supra note 1.

<sup>5</sup> Section D.2. of Procedure VIII of the Rules (“Procedure VIII”), supra note 1.

<sup>6</sup> See Section 1 of Rule 12, supra note 1 and Section 7(h) of Rule 53.

<sup>7</sup> See Section 7 of Rule 53, supra, note 1.

<sup>8</sup> Section 1 of Rule 55, supra note 1.

deadline.<sup>9</sup> The Rules do not explicitly require AIP Settling Banks to affirmatively acknowledge or refuse to settle, however, since the inception of AIP in 2008, NSCC's settlement procedures have required AIP Settling Banks to affirmatively acknowledge or refuse to settle in the same manner as required by Settling Banks. On a daily basis, NSCC calculates settlement payment amounts for EOD Settlement and for AIP Settlement and reports to NSCC Members and their respective NSCC Settling Banks, a settlement balance.<sup>10</sup> Then, through the Fed Funds Settlement system ("FFS"),<sup>11</sup> the Settling Banks and AIP Settling Banks must submit their acknowledgment of their intent to settle or refusal to settle such amounts on behalf of their respective NSCC Members or AIP Non-Member Funds by a deadline established by NSCC.<sup>12</sup> EOD Settlement occurs at the end of the day and, from an operational perspective, is centralized with DTC's end-of-day money settlement ("DTC Settlement").<sup>13</sup> For both EOD Settlement and AIP Settlement, if all of the NSCC Settling Banks submit acknowledgments of their intent to settle, then the Settlement Agent will submit the requisite file to the FRB for processing through the NSS.

If an NSCC Settling Bank notifies the Settlement Agent that the NSCC Settling Bank refuses to pay the settlement balance for an NSCC Member or AIP Non-Member Fund, then NSCC will exclude that NSCC Member's or AIP Non-Member Fund's amount and the Settlement Agent will provide the NSCC Settling Bank with a new settlement balance that no

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<sup>9</sup> Section D of Procedure VIII, supra note 1. A Settling Bank that is a Member and settles solely for its own accounts may opt to not acknowledge its settlement balance. Id.

<sup>10</sup> For EOD Settlement, Settling Banks are provided a net-net debit or net-net credit number. Section 2 of Rule 55, supra note 1. For AIP Settlement, each AIP Settling Bank is provided an aggregate gross debit number and an aggregate gross credit number with respect to each AIP Member or AIP Non-Member Fund on whose behalf it settles because for AIP Settlement, debits and credits are settled separately. Section 7 of Rule 55, supra note 1. For AIP Settlement, the net debts are paid first by AIP Settling Banks at approximately 11 a.m. and then net credits are paid to AIP Settling Banks at approximately 2 p.m. AIP settlement times are posted on NSCC's website.

<sup>11</sup> Section D of Procedure VIII requires Settling Banks to acknowledge settlement balances via "the terminal system" which is currently FFS. Section D of Procedure VIII, supra note 1.

<sup>12</sup> Section D.1 of Procedure VIII, supra note 1. The Rules do not explicitly require AIP Settling Banks to affirmatively acknowledge or refuse to settle, however, NSCC's settlement procedures have required AIP Settling Banks to affirmatively acknowledge or refuse to settle in the same manner as required by Settling Banks.

<sup>13</sup> DTC Settlement procedures and timing are set forth in the Settlement Service Guide of DTC ("Settlement Service Guide") available at <https://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf>. Because EOD Settlement and DTC Settlement are centralized, the timing and processes for NSCC Settlement are the same as those set forth in the Settlement Service Guide.

longer includes the excluded amount. The NSCC Settling Bank must then immediately send a message to the Settlement Agent acknowledging the new amount.<sup>14</sup> The Settlement Agent will then submit the requisite file to the FRB for processing through the NSS.

If a Settling Bank does not acknowledge or refuse by the settlement acknowledgment deadline, the Settlement Agent will use the most recent contact information available to contact the NSCC Settling Bank. If the Settlement Agent is unable to contact the NSCC Settling Bank or does not receive a response from the NSCC Settling Bank as to the acknowledgment or refusal, NSCC needs to determine whether to request an NSS extension while also determining whether to remove the Settling Bank's settlement balance from the NSS file.

Today, failure of an NSCC Settling Bank to timely respond to the Settlement Agent by the settlement acknowledgment deadline could create uncertainty with respect to timely completion of settlement at NSCC. This is because today, NSCC is not permitted under the Rules and its settlement procedures<sup>15</sup> to submit the NSS file (through the Settlement Agent) unless all NSCC Settling Banks in the file that are required to acknowledge,<sup>16</sup> have acknowledged. NSCC must therefore determine whether it should remove the settlement balance of the unresponsive NSCC Settling Bank from the NSS file in order to allow the processing of the rest of the NSS file for the other NSCC Settling Banks that are part of the NSS file. If NSCC does not remove the settlement balance of the unresponsive NSCC Settling Bank from the NSS file, then the NSS file cannot be created and settlement cannot be completed for the other NSCC Settling Banks that are part of the NSS file. As such, today, NSCC may need to remove the settlement balance of the unresponsive NSCC Settling Bank from the NSS file in order to submit the NSS file and complete settlement for the other NSCC Settling Banks that are part of the NSS file, thus potentially delaying settlement of the NSS file. Such potential delay would arise from the time needed to remove the figure of the unresponsive NSCC Settling Bank and then re-establish the NSS file. Moreover, with respect to the NSCC Members or AIP Non-Member Funds who were using the particular NSCC Settling Bank, NSCC would need to settle individually with those NSCC Members or AIP Non-Member Funds via the Fedwire Funds Service, which also presents the possibility of a delay because of the time it may take to complete this process individually with each affected NSCC Member.

NSCC is proposing to implement a passive acknowledgment process for EOD Settlement and AIP Settlement to address the situation discussed above where an NSCC Settling Bank is unresponsive and cannot be reached. This would allow NSCC to submit the NSS file (through

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<sup>14</sup> Section D.1 of Procedure VIII, supra note 1. The Rules do not explicitly require acknowledgment of the new settlement balance for AIP Settling Banks, however, since the inception of AIP in 2008, NSCC's settlement procedures have required AIP Settling Banks to affirmatively acknowledge or refuse to settle in the same manner as required by Settling Banks.

<sup>15</sup> Id.

<sup>16</sup> A Settling Bank that is a Member and settles solely for its own accounts may opt to not acknowledge its settlement balance. Section D of Procedure VIII, supra note 1.

the Settlement Agent) for NSS processing more promptly, and thereby allow settlement to be completed for the other NSCC Settling Banks that are part of the NSS file.

Until 2016, DTC's rules also required settling banks that settled on behalf of DTC Participants for DTC Settlement to affirmatively acknowledge or to refuse to settle. In 2016, DTC amended the Settlement Service Guide to provide for a passive acknowledgment process, such that a settling bank which does not timely affirmatively acknowledge its settlement balance or refuse to settle would be deemed to have acknowledged its settlement balance.<sup>17</sup> In 2020, Fixed Income Clearing Corporation ("FICC") also filed a rule filing to provide for similar passive acknowledgment process for FICC settling banks.<sup>18</sup> The passive acknowledgment process being proposed by NSCC is the same process that DTC and FICC have put in place.

### ***NSCC Passive Acknowledgment Process***

NSCC proposes to introduce a settling bank passive acknowledgment process in the Rules for Settling Banks and for AIP Settling Banks to manage the collection or payment of settlement amounts in the event that any Settling Bank or AIP Settling Bank does not timely provide an affirmative acknowledgment or refusal with respect to its settlement payment amounts by the settlement acknowledgment deadline. If a Settling Bank or an AIP Settling Bank does not acknowledge or refuse its settlement amount by the settlement acknowledgment deadline and NSCC is unable to establish contact with the Settling Bank or AIP Settling Bank, NSCC proposes to deem the Settling Bank's or AIP Settling Bank's final settlement balance as acknowledged. Through this proposed passive acknowledgment process, NSCC will assume that the Settling Bank or AIP Settling Bank that has failed to acknowledge its figures or refused to settle by the settlement acknowledgment deadline, intends to settle for its respective NSCC Members or AIP Non-Member Funds. The Settling Bank's or AIP Settling Bank's final debit settlement balance or final credit settlement balance would then be debited from or credited to its account at the Federal Reserve Bank through the NSS process.

Even with the implementation of the proposed passive acknowledgment process, NSCC must retain the discretion to remove the settlement balance of an NSCC Settling Bank from the NSS file.<sup>19</sup> In other words, currently, NSCC may remove the NSCC Settling Bank's figure from the NSS file in the situation where an NSCC Settling Bank is unresponsive and cannot be reached. Under the proposal, the need for NSCC to do so would arise in the event that an NSCC Settling Bank advises the Settlement Agent that it cannot yet determine whether to acknowledge or refuse. In such a circumstance, passive acknowledgment would not apply (as described below); however, as it gets closer to the NSS processing time, NSCC may need to remove the NSCC Settling Bank's settlement balance from the NSS file in order to allow settlement to be

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<sup>17</sup> See Securities Exchange Act Release No. 76887 (January 13, 2016), 81 FR 3218 (January 20, 2016) (SR-DTC-2015-011).

<sup>18</sup> See Securities Exchange Act Release No. 89593 (August 18, 2020), 85 FR 52164 (August 24, 2020) (SR-FICC-2020-006).

<sup>19</sup> This practice is currently not codified in the Rules.

completed for the other NSCC Settling Banks that are part of the NSS file and have affirmatively or passively acknowledged their figure. NSCC is proposing to codify its ability to remove the settlement balance of the NSCC Settling Bank from the NSS file. As NSCC would be codifying this current practice with this proposed rule change, this proposed rule change would not change the current settlement process of NSCC Settling Banks that are excluded from the NSS file. This proposed change is discussed below.

(i) **Proposed change to introduce passive acknowledgment process for NSCC Settling Banks**

*Proposed Passive Acknowledgment Process*

NSCC proposes to establish an “Acknowledgment Cutoff Time” for EOD Settlement and an “AIP Acknowledgment Cutoff Time” for AIP Settlement after which NSCC would apply the passive acknowledgment process if it is unable to reach an NSCC Settling Bank. Since EOD Settlement is centralized with DTC Settlement, the Acknowledgment Cutoff Time will be the Acknowledgment Cutoff Time established in the Settlement Service Guide for DTC Settlement.<sup>20</sup> To conform with current practice, the “Acknowledgment Cutoff Time” would be defined in Rule 1 as the time set forth as the Acknowledgment Cutoff Time in the DTC Settlement Service Guide which can be found on NSCC’s Website at <https://www.dtcc.com/legal/rules-and-procedures>. The “AIP Acknowledgement Cutoff Time” would be defined in Rule 1, with respect to each AIP Settling Bank regarding AIP Settlement of AIP Debit Balances and AIP Credit Balances, as the later of (i) 30 minutes after the AIP Settling Bank has been notified of its AIP Debit Balance or AIP Credit Balance (or, the new AIP Debit Balance or new AIP Credit Balance, if readjusted as set forth herein), as applicable, and (ii) 30 minutes prior to the settlement deadline established by NSCC. NSCC would add a statement that it would post the settlement deadlines for AIP Settlement on the NSCC Website which it currently does.

If an NSCC Settling Bank does not submit either (1) an acknowledgment that it will settle the settlement balance with NSCC or (2) a refusal to pay the settlement balance by the Acknowledgment Cutoff Time or the AIP Acknowledgment Cutoff Time, as applicable, and has not been in contact with the Settlement Agent, then the Settlement Agent would attempt to contact the NSCC Settling Bank. If the Settlement Agent is able to contact the NSCC Settling Bank and it notifies the Settlement Agent that the NSCC Settling Bank cannot, at that time, submit its acknowledgment or refusal to pay its settlement balance and that it needs more time, then the NSCC Settling Bank would not be deemed to have acknowledged that it will settle such settlement balance with NSCC. However, if the NSCC Settling Bank cannot be reached, then

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<sup>20</sup> The Acknowledgment Cutoff Time established in the Settlement Service Guide is currently the later of 4:15 p.m. and the time that is 30 minutes after net-net settlement balances are first made available. Page 19 of the Settlement Service Guide, *supra* note 13. For AIP, the current deadline for debit acknowledgment in NSCC’s settlement procedures is 9:30 a.m. and the current deadline for credit acknowledgment is 12:30 p.m. Such times are posted on NSCC’s website.



the NSCC Settling Bank would be deemed to have acknowledged that it will settle such settlement balance with NSCC.

The passive acknowledgment process described herein would also apply in situations where an NSCC Settling Bank is provided with a new settlement balance after such NSCC Settling Bank's refusal to pay the settlement balance for one or more NSCC Members or AIP Non-Member Funds.

NSCC would also revise the Rules to state that each NSCC Settling Bank must ensure that it maintains accurate contact details with the Settlement Agent so that the Settlement Agent may contact the NSCC Settling Bank regarding this settlement process and any settlement issues.

*Proposed Changes to Rule 1, Rule 55 and Procedure VIII*

The proposed passive acknowledgment process will require changes to Rule 1, Rule 55 with respect to AIP Settlement and Procedure VIII with respect to EOD Settlement. Specifically, NSCC proposes to add proposed new defined terms "Acknowledgment Cutoff Time" and "AIP Acknowledgment Cutoff Time" in Rule 1 as discussed above. NSCC proposes to add a phrase at the end of new subsection (b) of Section D.1. of Procedure VIII that would apply to Settling Banks that settle solely for their own accounts to state that if they choose to opt out of having to acknowledge their settlement balance, new subsections (c) and (e) (described below) of Section D.1. of Procedure VIII would not apply to them.<sup>21</sup>

NSCC proposes to add a new subsection (c) in Section 9 of Rule 55 and in Section D.1 of Procedure VIII to provide that if the NSCC Settling Bank does not acknowledge its settlement balance or notify the Settlement Agent that it refuses to settle, then at the AIP Acknowledgment Cutoff Time or Acknowledgment Cutoff Time, as applicable, the NSCC Settling Bank is deemed to have acknowledged its settlement balance.

NSCC proposes to amend the language in new subsection (d) of Section D.1 of Procedure VIII to delete the requirement that Settling Banks must send a message immediately after

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<sup>21</sup> Proposed subsections (c) and (e) describe the proposed passive acknowledgment process. As described above, if a Settling Bank that is a Member settles solely for its own account opts to not acknowledge its own settlement balance, the passive acknowledgment process would not apply to such Settling Banks because such Settling Banks cannot refuse to settle for their own accounts. For operational convenience, Settling Banks that are Members may choose to not acknowledge their own settlement balance because they cannot refuse to settle for their own accounts. Members are also required to be Participants at DTC and the Settlement Service Guide provides that a DTC Participant that acts as its own Settling Bank may not refuse to settle for itself. See p. 18 of the Settlement Service Guide, *supra*, note 13. As set forth below, NSCC is proposing to codify the practice in the Rules with respect to Members by adding a statement that a Settling Bank that is a Member may not refuse to settle for itself in Section D.1 of Procedure VIII. Therefore, proposed subsections (c) and (e) would not apply to such Settling Banks.

sending a refusal message acknowledging the new amount if it is a credit and its intention to settle if it is debit and instead provide that if the Settling Bank sends refusal messages, it must acknowledge to the Settlement Agent by the Acknowledgment Cutoff Time, its new settlement balance and its intention to settle by the settlement deadline. In addition, a sentence would be added stating that the new subsection (c) would apply with respect to the new settlement balances of the Settling Bank that sent refusal messages. Similar language would be added as a new subsection (d) of Section 9 in Rule 55 with respect to AIP Settling Banks and AIP Settlement.

NSCC proposes to amend Section 9 of Rule 55 and Section D.1 of Procedure VIII to add new subsection (e) which would provide that the Settlement Agent would attempt to contact the NSCC Settling Bank if no acknowledgment or notice of refusal to settle on behalf of one or more NSCC Member or AIP Non-Member Fund, as applicable, for which it is designated as the NSCC Settling Bank is received by the AIP Acknowledgment Cutoff Time or Acknowledgment Cutoff Time, as applicable. The new subsections would provide that if (i) the Settlement Agent is able to contact the NSCC Settling Bank and (ii) the NSCC Settling Bank notifies the Settlement Agent that it cannot, at that time, acknowledge or refuse their settlement balance, then the NSCC Settling Bank will not be deemed to have acknowledged its settlement balance. The new subsections would provide that if the NSCC Settling Bank cannot be reached, the NSCC Settling Bank will be deemed to have acknowledged its settlement balance. In the new subsection (e) of Section D.1 of Procedure VIII, NSCC would also state that the new proposed subsection (e) would not apply to a Settling Bank that settles solely for its own account and opts not to acknowledge its settlement balance.<sup>22</sup> As discussed in more detail below, the new subsection (e) of Section 9 of Rule 55 and Section D.1 of Procedure VIII would also contain a provision relating to NSCC's ability to exclude an NSCC Settling Bank's settlement balances from the NSS file if the NSCC Settling Bank has not acknowledged or been deemed to have acknowledged its settlement balance under certain circumstances.

NSCC proposes to add a new subsection (g) of Section 9 in Rule 55 and a new subsection (g) of Section D.1 of Procedure VIII which would provide the Settlement Agent uses the most recent contact information provided by the NSCC Settling Bank to the Settlement Agent. These proposed subsections would also include a requirement that each NSCC Settling Bank maintains up-to-date and accurate contact details with the Settlement Agent on an ongoing basis.

NSCC proposes to delete language in Section D.1 of Procedure VIII that states that if NSCC has not received funds from the Settling Bank with a net-net debit and the Settling Bank has not sent refusal messages and/or an acknowledgment message to NSCC by the deadline, NSCC begins failure to settle procedures in respect to the Settling Bank at this time. NSCC is proposing to delete this language to reflect the new passive acknowledgment process.

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<sup>22</sup> Section D.1 of Procedure VIII provides that Settling Bank that is a Member and settles solely for its own accounts may opt to not acknowledge its settlement balance. Section D.1 of Procedure VIII, supra, note 1.

(ii) **Amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category.**

The proposed change would amend the definition of AIP Settling Bank to correspond with the definition of Settling Bank and remove AIP Settling Bank Only Member as a membership category. AIP Settling Bank is currently defined as either (i) an AIP Member which is a bank or trust company meeting certain criteria or (ii) an AIP Settling Bank Only Member meeting certain criteria and which have entered into an effective Appointment of AIP Settling Bank and AIP Settling Bank Agreement. Since the inception of AIP, AIP Members have used (a) Members that are banks or trust companies meeting certain criteria and (b) Settling Bank Only Members meeting certain criteria and which have entered into Appointments of AIP Settling Bank and AIP Settling Bank Agreements as AIP Settling Banks. Since the inception of AIP, there have been no AIP Members that have acted as AIP Settling Banks and there have been no entities that have become AIP Settling Bank Only Members.

The proposed change would amend the definition of AIP Settling Bank in Rule 1 to provide that an AIP Settling Bank would be either (i) a Member which is a bank or trust company meeting certain criteria or (ii) a Settling Bank Only Member meeting certain criteria and which has entered into an effective Settling Bank Agreement which would be identical to the definition of Settling Bank. The definition of Settling Bank Agreement distinguishes between Settling Banks and AIP Settling Banks by indicating that in the Settling Bank Agreement entered into by an AIP Settling Bank, the AIP Settling Bank undertakes to perform settlement services for the AIP Member or the AIP Non-Member Fund which is a party thereto whereas Settling Banks make such undertakings with respect to Members and Limited Members that are not AIP Members. In addition, NSCC would delete the definition of AIP Settling Bank Only Member in Rule 1 and remove the term throughout the Rules, including a description of AIP Settling Bank Only Members in Section 2.(ii)(i) of Rule 2. NSCC would also change the reference to 2.(ii)(i) of Rule 2 in the definition of AIP Settling Bank to 2.(ii)(f) of Rule 2 to reflect that is referring to a Member which would qualify as a Settling Bank Only Member rather as an AIP Settling Bank Only Member. In addition, NSCC would amend Section 5 of Rule 3 to provide that NSCC shall maintain a list of Members and Settling Bank Only Members that have agreed to act as AIP Settling Banks to reflect that AIP Members would use Members and Settling Bank Only Members as AIP Settling Banks, as discussed above. Section 1 of Rule 55 would also be amended to reflect that an AIP Settling Bank shall be a Member or a Settling Bank Only Member. Addendum B would be amended to remove the references to AIP Settling Bank Only Members and to delete Section 11 which relates to membership requirements for AIP Settling Bank Only Members.

(iii) **Codify certain settlement processes**

The proposed rule change would codify certain settlement processes that are currently being used by NSCC.

Proposed change to codify certain settlement processes for AIP Settlement

Currently there are a number of settlement processes used in AIP Settlement that are not explicitly set forth in the Rules. These processes are the same processes that are set forth in the Section D.1 of Procedure VIII with respect to EOD Settlement and would be added in Section 9 of Rule 55 as follows:

- A statement that DTC will act as Settlement Agent for NSCC and the AIP Settling Banks in a new subsection (b)
- A requirement that AIP Settling Banks must acknowledge by the AIP Acknowledgment Cutoff Time via the terminal system their AIP Debit Balance and their AIP Credit Balance and their intention to settle or refusal to settle by the AIP Acknowledgment Cutoff Time in a new subsection (b); as proposed above, there would be an AIP Acknowledgment Cutoff Time with respect to AIP Settlement for the AIP Debit Balances and the AIP Credit Balances.
- A statement that if the AIP Settling Bank has an AIP Debit Balance, then the AIP Settling Bank's account at the Federal Reserve Bank will be debited; if the AIP Settling Bank has an AIP Credit Balance, then the AIP Settling Bank's Federal Reserve Bank account will be credited in new subsection (c)
- A statement that if the AIP Settling Bank sends a refusal message it must acknowledge its new AIP Debit Balance and AIP Credit Balance by the AIP Acknowledgment Cutoff Time via the terminal system and its intention to settle in new subsection (d)
- A statement that the AIP Settling Bank that cannot send an acknowledgment or refusal message may contact the Settlement Agent and instruct the Settlement Agent to act on its behalf in new subsection (f)

Proposed change to allow NSCC to exclude NSCC Settling Bank balance from NSS file

The proposed rule change would provide that if (1) passive acknowledgment does not apply because the NSCC Settling Bank has notified the Settlement Agent that it cannot yet acknowledge or refuse its settlement balance and (2) the payment deadline established by NSCC is approaching, then NSCC would have the ability to exclude the NSCC Settling Bank's settlement balance from the NSS file. This would allow settlement to be completed for the other NSCC Settling Banks that are part of the NSS file. As described above, as it gets closer to the payment deadline, NSCC may need to remove the NSCC Member's balance from the NSS file in order to allow settlement to be completed for the other NSCC Settling Banks that are part of the NSS file. As NSCC would be codifying its current practice with this proposed rule change, this proposed change would not change the current settlement process of NSCC Settling Banks that are excluded from the NSS file.

This proposed change is reflected in the second paragraph of new subsection (e) of Section 9 of Rule 55 and new subsection (e) of Section D.1 of Procedure VIII.

(iv) **Proposed technical, clarifying and conforming changes**

NSCC is proposing to make the following technical, clarifying and conforming changes in the Rules to better clarify the meaning of certain provisions and to be consistent with other provisions in the Rules:

- Remove the space after “Section 2.” in the new proposed reference to “Section 2. (ii)(f)” in two places in the definition of AIP Settlement Bank in Rule 1 for clarity
- Add a definition of “FRB” as the Board of Governors of the Federal Reserve System and each Federal Reserve Bank, as appropriate, to reflect the usage of FRB in the Rules
- Add a definition of FRBNY as the Federal Reserve Bank of New York, to reflect the usage of FRBNY in the Rules
- Change the reference of “2. (ii)(j)” to “2.(ii)(i)” in the definition of Investment Manager/Agent Member in Rule 1 to reflect the proposed renumbering of that section
- Add AIP Settling Banks in the definition of Settlement Agent in Rule 1 to clarify that the Settlement Agent also acts on behalf of AIP Settling Banks with respect to AIP Settlement
- Add quotation marks to TPP Member in the definition of Third Party Provider Member to conform usage of quotation marks in other defined terms in the Rules
- Change the reference of “2. (ii)(k)” to “2.(ii)(j)” in the definition of Third Party Provider Member in Rule 1 to reflect the proposed renumbering of that section
- Renumber Sections 2.(ii)(j) and 2.(ii)(k) to reflect the deletion of AIP Settling Bank Only Member in Section 2.(ii)(i)
- Add “Rule 55” in Section 7(a) of Rule 53 to acknowledge that certain AIP settling processes are set forth in Rule 55
- Add subsection references to Section 9 of Rule 55 for clarity
- Replace “the Procedures” with “Section 9 above” in Section 10 of Rule 55 to reflect that the manner and time specified for AIP Refusal is set forth in Section 9 of Rule 55
- Change “Refusal” to “AIP Refusal” in Sections 10, 11 and 12 of Rule 55 to reflect the proper defined term for refusals with respect to AIP Settlement
- Add “or the Settlement Agent” in two places in Section 10 of Rule 55 to reflect that the bank used for settlement and the manner of payment of settlement may be specified by NSCC or the Settlement Agent
- Remove “provided in the Procedures” and “in the Procedures” and add “specified in accordance with settlement procedures adopted by the Corporation or the Settlement Agent” in Section 10 of Rule 55 to reflect that the bank account and manner of payment may be specified in settlement procedures adopted by NSCC or the Settlement Agent
- Replace “net debit” and “debit balance” with “AIP Debit Balance” in Section 10 of Rule 55 to reflect the existing defined term
- Add “settlement” before “procedures” in Section 10 of Rule 55 to clarify that the reference is to settlement procedures
- Change “Settling Bank” to “AIP Settling Bank” in Section 11 of Rule 55 to reflect the proper defined term for settling banks with respect to AIP Settlement
- Change “Settling AIP Bank” to “AIP Settling Bank” in Section 12 of Rule 55 to reflect the proper defined term
- Add a defined term “Settlement Member” in new subsection (a) in Section D.1 of Procedure VIII which would be a Member, Mutual Fund/Insurance Service Member, Insurance Carrier/Retirement Service Member or Fund Member for which a Settling

- Bank is the designated Settling Bank to replace the reference to “each of its participant’s accounts”
- Add a defined term “Settlement Balance” in new subsection (a) in Section D.1. of Procedure VIII which would be the Settling Bank’s final settlement balance and replace the phrase “settlement figure” with “settlement balance” to reflect usage elsewhere when referring to the settlement balance
  - Replace “NSCC” with “Settlement Agent” in new subsection (b) in D.1 of Procedure VIII to reflect that the Settling Banks acknowledge to the Settlement Agent their intention to settle
  - Replace “settlement figures” with “Settlement Balances” in new subsection (b) in Section D.1. of Procedure VIII to reflect the new defined term
  - Replace the list of Members and Limited Members that may use a Settling Bank with the new defined term “Settlement Members” in new subsection (b) in Section D.1 of Procedure VIII to reflect the new defined term.
  - Remove the sentence in new subsection (b) in D.1 of Procedure VIII that states that an acknowledgment must be sent even if the Settling Bank has wired the amount of its net net debit prior to the cut off time because the statement is unnecessary as it is unlikely that situation would occur
  - Add a statement in new subsection (b) in D.1 of Procedure VIII to codify current practice set forth in the Settlement Service Guide with respect to Participants that applies to Members that a Settling Bank that is a Member may not refuse to settle for itself
  - Revise new subsection (f) in Section D.1. of Procedure VIII to remove outdated references to NSCC, the telephone as the only means of contact and a number for Settlement Operations in the membership directory to reflect the current procedures such that a Settling Bank that cannot send an acknowledgment or refusal message may contact the Settlement Agent and instruct the Settlement Agent act on its behalf
  - Replace “NSCC” with “Settlement Agent” in two places in new subsection (h) in Section D.1 of Procedure VIII to reflect that Settling Banks send their acknowledgments to the Settlement Agent
  - Replace “this time” with “the settlement deadline” in the new subsection (h) in Section D.1 of Procedure VIII to clarify that it is referring to the settlement deadline
  - Replace the list of Members and Limited Members for which a Settling Bank may send a refusal with “Settlement Member” to reflect the proposed new defined term in the new subsection (i) in Section D.1 of Procedure VIII
  - Replace “Corporation” with “Settlement Agent” in new subsection (j) in Section D.1 of Procedure VIII to reflect that the Settlement Agent will receive funds and initiate payments to Settling Banks
  - Replace “Federal Reserve Bank’s National Settlement Service” with “NSS” in Section D.2. of Procedure VIII to reflect that NSCC is proposing to move the defined term NSS earlier in the Rules
  - Capitalize “balance” in Section D.2. of Procedure VIII to reflect the new defined term Settlement Balance
  - Make “Settlement” lowercase in Section D.3 of Procedure VIII to reflect that Settlement is not a defined term

- Add the word “operations” before “department” in Section D.3 of Procedure VIII to reflect that the name of the department is the settlement operations department
- Capitalize “settlement balance” in Section D.3 of Procedure VIII to reflect the new defined term

(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 this proposal is consistent with Section 17A(b)(3)(F) of the Act.<sup>23</sup>

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.<sup>24</sup> The EOD Settlement and AIP Settlement processes at NSCC reflect cash debits and credits of payments that are associated with securities transactions that will ultimately be subject to securities settlement. NSCC believes that failure by an NSCC Settling Bank to timely acknowledge that it will settle its settlement balance with NSCC or to refuse to pay its settlement balance creates uncertainty with respect to the timely completion of settlement at NSCC. NSCC believes that the introduction of the proposed passive acknowledgment process described in Item 3(a)(i) above would help promote the prompt and accurate clearance and settlement of securities transactions in circumstances where an NSCC Settling Bank has not responded by the Acknowledgment Cutoff Time or the AIP Acknowledgment Cutoff Time, as applicable, and cannot be reached by the Settlement Agent. In such circumstances, as described above, NSCC would deem that such NSCC Settling Bank has acknowledged that it will settle settlement balances. This would enable NSCC to submit the NSS file (through the Settlement Agent) as is for processing in a timely manner, and thereby enhance certainty with respect to the timely completion of settlement. Timely completion of such settlement at NSCC for as many members as possible promotes the prompt and accurate clearance and settlement of securities transactions as a general matter, because the EOD Settlement and AIP Settlement processes at NSCC involve debits and credits that will ultimately be subject to securities settlement. As such, NSCC believes the proposed change to introduce the passive acknowledgment process described in Item 3(a)(i) above is designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>25</sup>

NSCC also believes that the proposal to (a) amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category described in Item 3(a)(ii) above and (b) codify certain settlement processes for AIP Settlement described in Item 3(a)(iii) above are designed to

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<sup>23</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>24</sup> Id.

<sup>25</sup> Id.

promote the prompt and accurate clearance and settlement of securities transactions.<sup>26</sup> As discussed above settling banks used for AIP Settlement have historically been Members or Settling Bank Only Members and not AIP Members or AIP Settling Bank Only Members. In addition, there have been no entities that have become AIP Settling Bank Only Members. The existing processes related to AIP Settlement that are being added as described in Item 3(a)(iii) above are existing processes in AIP Settlement. NSCC believes that in each case making such provisions explicit in the Rules is consistent with Section 17(A)(b)(3)(F) of the Act<sup>27</sup> because such changes would enhance the clarity and transparency of the Rules with respect to AIP Settlement. By enhancing the clarity and transparency of the Rules, the proposed changes would allow AIP Members and AIP Non-Member Funds to more efficiently and effectively conduct their business in accordance with the Rules, which NSCC believes would promote the prompt and 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>28</sup>

NSCC also believes that the proposal to codify NSCC's ability to exclude an NSCC Settling Bank's balance from the NSS file described in Item 3(a)(iii) above is designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>29</sup> If an NSCC Settling Bank notifies the Settlement Agent that it cannot yet acknowledge or refuse, NSCC would not be able to submit the NSS file (through the Settlement Agent) with that NSCC Settling Bank's settlement balance included. If the NSCC Settling Bank does not ultimately respond with either an acknowledgment or refusal, then NSCC must have the ability to exclude such NSCC Settling Bank's settlement balance from the NSS file. In this way, settlement can be completed for all other NSCC Members. Therefore, NSCC believes the proposed changes to codify NSCC's ability to exclude an NSCC Settling Bank's balance from the NSS file described in in Item 3(a)(iii) above is designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>30</sup>

NSCC also believes that the proposed rule changes to make the technical, clarifying and conforming changes, as described in Item 3(a)(iv) above, are designed to promote the prompt and accurate clearance and settlement of securities transactions by ensuring that the Rules remain clear and accurate to NSCC Members and that NSCC Members understand EOD Settlement and AIP Settlement. Having clear and accurate Rules would facilitate members' understanding of those Rules and provide members with increased predictability and certainty regarding their obligations. As such, NSCC believes these proposed changes would promote the prompt and

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<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Id.



accurate clearance and settlement of securities, consistent with Section 17A(b)(3)(F) of the Act.<sup>31</sup>

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

NSCC does not believe that the proposed rule changes described in Item 3(a)(i) above to introduce the passive acknowledgment process for NSCC Settling Banks would have any impact on competition,<sup>32</sup> because the proposed passive acknowledgment process would not have an impact on the NSCC Settling Banks’ current ability to timely acknowledge their settlement balances, as it is intended to address situations where an NSCC Settling Bank is not responding and cannot be reached. If an NSCC Settling Bank notifies the Settlement Agent that the NSCC Settling Bank cannot, at that time, submit its acknowledgment that it will settle its settlement balances with NSCC or its refusal to pay its settlement balances, then the NSCC Settling Bank would not be deemed to have acknowledged that it will settle such settlement balances with NSCC. Therefore, NSCC believes that the proposed passive acknowledgment process described in Item 3(a)(i) above would not have any impact on competition.

NSCC also does not believe that the proposal to amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category described in Item 3(a)(ii) above would have any impact on competition<sup>33</sup> because settling banks used for AIP Settlement have historically been Members or Settling Bank Only Members and not AIP Members or AIP Settling Bank Only Members. In addition, there have been no entities that have become AIP Settling Bank Only Members. As such NSCC does not believe the proposed changes to (a) amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category described in Item 3(a)(ii) above would affect the rights or obligations of NSCC or NSCC Members or have any impact on competition.

NSCC also does not believe that the proposed changes to exclude an NSCC Settling Bank’s balance from the NSS file, as described in Item 3(a)(iii) above, would have any impact on competition<sup>34</sup> because this proposal, if invoked, would require the affected NSCC Settling Bank to send payment to NSCC by wire, which is an alternate form of payment already available to the NSCC Settling Banks. NSCC believes that ready availability of a reasonable payment alternative would result in the rights and obligations of the NSCC Settling Banks not being adversely affected. As such, NSCC does not believe that the proposed changes to exclude an NSCC Settling Bank’s balance from the NSS file, as described in Item 3(a)(iii) above, would have any impact on competition.

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<sup>31</sup> Id.

<sup>32</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>33</sup> Id.

<sup>34</sup> Id.

NSCC also does not believe that the proposed rule changes to codify the AIP Settlement processes described in Item 3(a)(iii) or to make the technical, clarifying and conforming changes described in Item 3(a)(iv) above would have an impact on competition.<sup>35</sup> These changes would simply provide additional clarity within the Rules and not affect NSCC Members' rights and obligations.

#### **5. Self-Regulatory Organization'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 Securities and Exchange Commission ("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-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 not to respond to any comments received.

#### **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 Act<sup>36</sup> 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.
- (b) Not applicable.
- (c) Not applicable.
- (d) Not applicable.

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<sup>35</sup> Id.

<sup>36</sup> 15 U.S.C. 78s(b)(2).

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

The proposed rule changes are based on a rule filing by DTC that proposed passive acknowledgment on the part of the DTC settling banks (SR-DTC-2015-011)<sup>37</sup> among other changes and a rule filing by FICC that proposed passive acknowledgment on the part of the FICC settling banks (SR-FICC-2020-006).<sup>38</sup> Concerning passive acknowledgment, NSCC does not believe that there is a material difference between the conduct required to comply with the proposed rule change and that required to comply with the DTC or FICC rule filing.

**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.

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<sup>37</sup> Supra note 17.

<sup>38</sup> Supra note 18.

**EXHIBIT 1A**

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[\_\_\_\_\_]; File No. SR-NSCC-2021-013)

[DATE]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Provide for a Passive Acknowledgment Process, Codify Certain Settlement Processes and Make Technical, Clarifying and Conforming Changes to the NSCC Rules & Procedures.

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 \_\_, 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 would amend NSCC’s Rules & Procedures (“Rules”)<sup>3</sup> in order to (i) provide for a passive acknowledgment process whereby any settling bank that does not timely acknowledge that it will settle its settlement balance with NSCC (i.e., acknowledge its intention to pay to or collect from NSCC), or refuse to settle for one or

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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> Capitalized terms not defined herein are defined in the Rules, available at [https://dtcc.com/~media/Files/Downloads/legal/rules/nsc\\_rules.pdf](https://dtcc.com/~media/Files/Downloads/legal/rules/nsc_rules.pdf).

more Members or Limited Members (collectively, “NSCC Members”) or AIP Non-Member Funds for which it is the designated Settling Bank or AIP Settling Bank (collectively, “NSCC Settling Banks”) and has not otherwise been in contact with NSCC, would be deemed to have acknowledged its settlement balances, (ii) amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category, (iii) codify certain settlement processes and (iv) make certain technical, clarifying and conforming changes.

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 (i) provide for a passive acknowledgment process whereby any settling bank that does not timely acknowledge that it will settle its settlement balance with NSCC (i.e., acknowledge its intention to pay to or collect from NSCC), or refuse to settle for one or more NSCC Members or AIP Non-Member Funds for which it is the designated NSCC Settling Bank and has not otherwise been in contact with NSCC, would be deemed to have acknowledged its settlement balances, (ii) amend the definition of “AIP Settling Bank” to correspond with

the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category, (iii) codify certain settlement processes and (iv) make certain technical, clarifying and conforming changes.

**Background**

***NSCC Membership; Settling Banks and AIP Settling Banks – Settlement Processes***

NSCC membership consists of Members that have access to NSCC’s guaranteed central counterparty services and Limited Members that have access to NSCC’s non-guaranteed services, such as Mutual Fund Services and Alternative Investment Product Services (“AIP”).<sup>4</sup> Limited Members that only have access to AIP are referred to as AIP Members.<sup>5</sup> For purposes of this filing, all Members and Limited Members, including AIP Members, are referred to collectively as NSCC Members. AIP Non-Member Funds are entities that are not AIP Members but that NSCC has approved to settle AIP Payments as described in Rule 53.<sup>6</sup>

NSCC provides a standardized, automated method for money settlement obligations, between NSCC and NSCC Settling Banks acting on behalf of NSCC Members and AIP Non-Member Funds. NSCC’s settlement services eliminate manual processing and reduce costs by aggregating the money settlement payments due to or from an NSCC Member or AIP Non-Member Fund, and then, automatically debiting or crediting such NSCC Member’s account or AIP Non-Member Fund’s account at its

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<sup>4</sup> See Section 2 of Rule 2, supra note 3.

<sup>5</sup> Id.

<sup>6</sup> Definition of “AIP Non-Member Fund” in Rule 1, supra note 3.

NSCC Settling Bank. Money settlement is effected via the Federal Reserve Banks' ("FRB") National Settlement Service ("NSS").<sup>7</sup>

NSCC provides two separate settlement processes – (i) end of day settlement for Members and Limited Members other than AIP Members ("EOD Settlement") and (ii) daily settlement for AIP Members and AIP Non-Member Funds ("AIP Settlement"). Both settlement processes require each NSCC Member or AIP Non-Member Fund to designate a settling bank to effect money settlement on its behalf at NSCC.<sup>8</sup> Settling Banks settle on behalf of Members and Limited Members with respect to EOD Settlement and AIP Settling Banks settle on behalf of AIP Members and AIP Non-Member Funds with respect to AIP Settlement. All AIP money settlement is effected on a gross basis, where on the applicable settlement date, AIP debits are collected first, and in the afternoon all contra-side credits, where the corresponding debits have been collected, are paid.<sup>9</sup>

Each NSCC Settling Bank is required by the NSCC Rules to enter into a settling bank agreement with the NSCC Member or AIP Non-Member Fund on whose behalf it settles and to abide by the Rules.<sup>10</sup> The Rules require Settling Banks to acknowledge to NSCC their settlement balances and their intention to settle with NSCC or their refusal to

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<sup>7</sup> Section D.2. of Procedure VIII of the Rules ("Procedure VIII"), supra note 3.

<sup>8</sup> See Section 1 of Rule 12, supra note 3 and Section 7(h) of Rule 53.

<sup>9</sup> See Section 7 of Rule 53, supra, note 3.

<sup>10</sup> Section 1 of Rule 55, supra note 3.

settle by the settlement deadline.<sup>11</sup> The Rules do not explicitly require AIP Settling Banks to affirmatively acknowledge or refuse to settle, however, since the inception of AIP in 2008, NSCC's settlement procedures have required AIP Settling Banks to affirmatively acknowledge or refuse to settle in the same manner as required by Settling Banks. On a daily basis, NSCC calculates settlement payment amounts for EOD Settlement and for AIP Settlement and reports to NSCC Members and their respective NSCC Settling Banks, a settlement balance.<sup>12</sup> Then, through the Fed Funds Settlement system ("FFS"),<sup>13</sup> the Settling Banks and AIP Settling Banks must submit their acknowledgment of their intent to settle or refusal to settle such amounts on behalf of their respective NSCC Members or AIP Non-Member Funds by a deadline established by NSCC.<sup>14</sup> EOD Settlement occurs at the end of the day and, from an operational

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<sup>11</sup> Section D of Procedure VIII, supra note 3. A Settling Bank that is a Member and settles solely for its own accounts may opt to not acknowledge its settlement balance. Id.

<sup>12</sup> For EOD Settlement, Settling Banks are provided a net-net debit or net-net credit number. Section 2 of Rule 55, supra note 3. For AIP Settlement, each AIP Settling Bank is provided an aggregate gross debit number and an aggregate gross credit number with respect to each AIP Member or AIP Non-Member Fund on whose behalf it settles because for AIP Settlement, debits and credits are settled separately. Section 7 of Rule 55, supra note 3. For AIP Settlement, the net debts are paid first by AIP Settling Banks at approximately 11 a.m. and then net credits are paid to AIP Settling Banks at approximately 2 p.m. AIP settlement times are posted on NSCC's website.

<sup>13</sup> Section D of Procedure VIII requires Settling Banks to acknowledge settlement balances via "the terminal system" which is currently FFS. Section D of Procedure VIII, supra note 3.

<sup>14</sup> Section D.1 of Procedure VIII, supra note 3. The Rules do not explicitly require AIP Settling Banks to affirmatively acknowledge or refuse to settle, however, NSCC's settlement procedures have required AIP Settling Banks to affirmatively acknowledge or refuse to settle in the same manner as required by Settling Banks.



perspective, is centralized with DTC's end-of-day money settlement ("DTC Settlement").<sup>15</sup> For both EOD Settlement and AIP Settlement, if all of the NSCC Settling Banks submit acknowledgments of their intent to settle, then the Settlement Agent will submit the requisite file to the FRB for processing through the NSS.

If an NSCC Settling Bank notifies the Settlement Agent that the NSCC Settling Bank refuses to pay the settlement balance for an NSCC Member or AIP Non-Member Fund, then NSCC will exclude that NSCC Member's or AIP Non-Member Fund's amount and the Settlement Agent will provide the NSCC Settling Bank with a new settlement balance that no longer includes the excluded amount. The NSCC Settling Bank must then immediately send a message to the Settlement Agent acknowledging the new amount.<sup>16</sup> The Settlement Agent will then submit the requisite file to the FRB for processing through the NSS.

If a Settling Bank does not acknowledge or refuse by the settlement acknowledgment deadline, the Settlement Agent will use the most recent contact information available to contact the NSCC Settling Bank. If the Settlement Agent is unable to contact the NSCC Settling Bank or does not receive a response from the NSCC

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<sup>15</sup> DTC Settlement procedures and timing are set forth in the Settlement Service Guide of DTC ("Settlement Service Guide") available at <https://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf>. Because EOD Settlement and DTC Settlement are centralized, the timing and processes for NSCC Settlement are the same as those set forth in the Settlement Service Guide.

<sup>16</sup> Section D.1 of Procedure VIII, supra note 3. The Rules do not explicitly require acknowledgment of the new settlement balance for AIP Settling Banks, however, since the inception of AIP in 2008, NSCC's settlement procedures have required AIP Settling Banks to affirmatively acknowledge or refuse to settle in the same manner as required by Settling Banks.

Settling Bank as to the acknowledgment or refusal, NSCC needs to determine whether to request an NSS extension while also determining whether to remove the Settling Bank's settlement balance from the NSS file.

Today, failure of an NSCC Settling Bank to timely respond to the Settlement Agent by the settlement acknowledgment deadline could create uncertainty with respect to timely completion of settlement at NSCC. This is because today, NSCC is not permitted under the Rules and its settlement procedures<sup>17</sup> to submit the NSS file (through the Settlement Agent) unless all NSCC Settling Banks in the file that are required to acknowledge,<sup>18</sup> have acknowledged. NSCC must therefore determine whether it should remove the settlement balance of the unresponsive NSCC Settling Bank from the NSS file in order to allow the processing of the rest of the NSS file for the other NSCC Settling Banks that are part of the NSS file. If NSCC does not remove the settlement balance of the unresponsive NSCC Settling Bank from the NSS file, then the NSS file cannot be created and settlement cannot be completed for the other NSCC Settling Banks that are part of the NSS file. As such, today, NSCC may need to remove the settlement balance of the unresponsive NSCC Settling Bank from the NSS file in order to submit the NSS file and complete settlement for the other NSCC Settling Banks that are part of the NSS file, thus potentially delaying settlement of the NSS file. Such potential delay would arise from the time needed to remove the figure of the unresponsive NSCC Settling Bank and then re-establish the NSS file. Moreover, with respect to the NSCC

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<sup>17</sup> Id.

<sup>18</sup> A Settling Bank that is a Member and settles solely for its own accounts may opt to not acknowledge its settlement balance. Section D of Procedure VIII, supra note 3.

Members or AIP Non-Member Funds who were using the particular NSCC Settling Bank, NSCC would need to settle individually with those NSCC Members or AIP Non-Member Funds via the Fedwire Funds Service, which also presents the possibility of a delay because of the time it may take to complete this process individually with each affected NSCC Member.

NSCC is proposing to implement a passive acknowledgment process for EOD Settlement and AIP Settlement to address the situation discussed above where an NSCC Settling Bank is unresponsive and cannot be reached. This would allow NSCC to submit the NSS file (through the Settlement Agent) for NSS processing more promptly, and thereby allow settlement to be completed for the other NSCC Settling Banks that are part of the NSS file.

Until 2016, DTC's rules also required settling banks that settled on behalf of DTC Participants for DTC Settlement to affirmatively acknowledge or to refuse to settle. In 2016, DTC amended the Settlement Service Guide to provide for a passive acknowledgment process, such that a settling bank which does not timely affirmatively acknowledge its settlement balance or refuse to settle would be deemed to have acknowledged its settlement balance.<sup>19</sup> In 2020, Fixed Income Clearing Corporation ("FICC") also filed a rule filing to provide for similar passive acknowledgment process for FICC settling banks.<sup>20</sup> The passive acknowledgment process being proposed by NSCC is the same process that DTC and FICC have put in place.

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<sup>19</sup> See Securities Exchange Act Release No. 76887 (January 13, 2016), 81 FR 3218 (January 20, 2016) (SR-DTC-2015-011).

<sup>20</sup> See Securities Exchange Act Release No. 89593 (August 18, 2020), 85 FR 52164 (August 24, 2020) (SR-FICC-2020-006).

*NSCC Passive Acknowledgment Process*

NSCC proposes to introduce a settling bank passive acknowledgment process in the Rules for Settling Banks and for AIP Settling Banks to manage the collection or payment of settlement amounts in the event that any Settling Bank or AIP Settling Bank does not timely provide an affirmative acknowledgment or refusal with respect to its settlement payment amounts by the settlement acknowledgment deadline. If a Settling Bank or an AIP Settling Bank does not acknowledge or refuse its settlement amount by the settlement acknowledgment deadline and NSCC is unable to establish contact with the Settling Bank or AIP Settling Bank, NSCC proposes to deem the Settling Bank's or AIP Settling Bank's final settlement balance as acknowledged. Through this proposed passive acknowledgment process, NSCC will assume that the Settling Bank or AIP Settling Bank that has failed to acknowledge its figures or refused to settle by the settlement acknowledgment deadline, intends to settle for its respective NSCC Members or AIP Non-Member Funds. The Settling Bank's or AIP Settling Bank's final debit settlement balance or final credit settlement balance would then be debited from or credited to its account at the Federal Reserve Bank through the NSS process.

Even with the implementation of the proposed passive acknowledgment process, NSCC must retain the discretion to remove the settlement balance of an NSCC Settling Bank from the NSS file.<sup>21</sup> In other words, currently, NSCC may remove the NSCC Settling Bank's figure from the NSS file in the situation where an NSCC Settling Bank is unresponsive and cannot be reached. Under the proposal, the need for NSCC to do so would arise in the event that an NSCC Settling Bank advises the Settlement Agent that it

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<sup>21</sup> This practice is currently not codified in the Rules.

cannot yet determine whether to acknowledge or refuse. In such a circumstance, passive acknowledgment would not apply (as described below); however, as it gets closer to the NSS processing time, NSCC may need to remove the NSCC Settling Bank's settlement balance from the NSS file in order to allow settlement to be completed for the other NSCC Settling Banks that are part of the NSS file and have affirmatively or passively acknowledged their figure. NSCC is proposing to codify its ability to remove the settlement balance of the NSCC Settling Bank from the NSS file. As NSCC would be codifying this current practice with this proposed rule change, this proposed rule change would not change the current settlement process of NSCC Settling Banks that are excluded from the NSS file. This proposed change is discussed below.

(i) **Proposed change to introduce passive acknowledgment process for NSCC Settling Banks**

*Proposed Passive Acknowledgment Process*

NSCC proposes to establish an "Acknowledgment Cutoff Time" for EOD Settlement and an "AIP Acknowledgment Cutoff Time" for AIP Settlement after which NSCC would apply the passive acknowledgment process if it is unable to reach an NSCC Settling Bank. Since EOD Settlement is centralized with DTC Settlement, the Acknowledgment Cutoff Time will be the Acknowledgment Cutoff Time established in the Settlement Service Guide for DTC Settlement.<sup>22</sup> To conform with current practice,

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<sup>22</sup> The Acknowledgment Cutoff Time established in the Settlement Service Guide is currently the later of 4:15 p.m. and the time that is 30 minutes after net-net settlement balances are first made available. Page 19 of the Settlement Service Guide, *supra* note 15. For AIP, the current deadline for debit acknowledgment in NSCC's settlement procedures is 9:30 a.m. and the current deadline for credit acknowledgment is 12:30 p.m. Such times are posted on NSCC's website.

the “Acknowledgment Cutoff Time” would be defined in Rule 1 as the time set forth as the Acknowledgment Cutoff Time in the DTC Settlement Service Guide which can be found on NSCC’s Website at <https://www.dtcc.com/legal/rules-and-procedures>. The “AIP Acknowledgment Cutoff Time” would be defined in Rule 1, with respect to each AIP Settling Bank regarding AIP Settlement of AIP Debit Balances and AIP Credit Balances, as the later of (i) 30 minutes after the AIP Settling Bank has been notified of its AIP Debit Balance or AIP Credit Balance (or, the new AIP Debit Balance or new AIP Credit Balance, if readjusted as set forth herein), as applicable, and (ii) 30 minutes prior to the settlement deadline established by NSCC. NSCC would add a statement that it would post the settlement deadlines for AIP Settlement on the NSCC Website which it currently does.

If an NSCC Settling Bank does not submit either (1) an acknowledgment that it will settle the settlement balance with NSCC or (2) a refusal to pay the settlement balance by the Acknowledgment Cutoff Time or the AIP Acknowledgment Cutoff Time, as applicable, and has not been in contact with the Settlement Agent, then the Settlement Agent would attempt to contact the NSCC Settling Bank. If the Settlement Agent is able to contact the NSCC Settling Bank and it notifies the Settlement Agent that the NSCC Settling Bank cannot, at that time, submit its acknowledgment or refusal to pay its settlement balance and that it needs more time, then the NSCC Settling Bank would not be deemed to have acknowledged that it will settle such settlement balance with NSCC. However, if the NSCC Settling Bank cannot be reached, then the NSCC Settling Bank would be deemed to have acknowledged that it will settle such settlement balance with NSCC.

The passive acknowledgment process described herein would also apply in situations where an NSCC Settling Bank is provided with a new settlement balance after such NSCC Settling Bank's refusal to pay the settlement balance for one or more NSCC Members or AIP Non-Member Funds.

NSCC would also revise the Rules to state that each NSCC Settling Bank must ensure that it maintains accurate contact details with the Settlement Agent so that the Settlement Agent may contact the NSCC Settling Bank regarding this settlement process and any settlement issues.

*Proposed Changes to Rule 1, Rule 55 and Procedure VIII*

The proposed passive acknowledgment process will require changes to Rule 1, Rule 55 with respect to AIP Settlement and Procedure VIII with respect to EOD Settlement. Specifically, NSCC proposes to add proposed new defined terms "Acknowledgment Cutoff Time" and "AIP Acknowledgment Cutoff Time" in Rule 1 as discussed above. NSCC proposes to add a phrase at the end of new subsection (b) of Section D.1. of Procedure VIII that would apply to Settling Banks that settle solely for their own accounts to state that if they choose to opt out of having to acknowledge their settlement balance, new subsections (c) and (e) (described below) of Section D.1. of Procedure VIII would not apply to them.<sup>23</sup>

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<sup>23</sup> Proposed subsections (c) and (e) describe the proposed passive acknowledgment process. As described above, if a Settling Bank that is a Member settles solely for its own account opts to not acknowledge its own settlement balance, the passive acknowledgment process would not apply to such Settling Banks because such Settling Banks cannot refuse to settle for their own accounts. For operational convenience, Settling Banks that are Members may choose to not acknowledge their own settlement balance because they cannot refuse to settle for their own accounts. Members are also required to be Participants at DTC and the Settlement Service Guide provides that a DTC Participant that acts as its own

NSCC proposes to add a new subsection (c) in Section 9 of Rule 55 and in Section D.1 of Procedure VIII to provide that if the NSCC Settling Bank does not acknowledge its settlement balance or notify the Settlement Agent that it refuses to settle, then at the AIP Acknowledgment Cutoff Time or Acknowledgment Cutoff Time, as applicable, the NSCC Settling Bank is deemed to have acknowledged its settlement balance.

NSCC proposes to amend the language in new subsection (d) of Section D.1 of Procedure VIII to delete the requirement that Settling Banks must send a message immediately after sending a refusal message acknowledging the new amount if it is a credit and its intention to settle if it is debit and instead provide that if the Settling Bank sends refusal messages, it must acknowledge to the Settlement Agent by the Acknowledgment Cutoff Time, its new settlement balance and its intention to settle by the settlement deadline. In addition, a sentence would be added stating that the new subsection (c) would apply with respect to the new settlement balances of the Settling Bank that sent refusal messages. Similar language would be added as a new subsection (d) of Section 9 in Rule 55 with respect to AIP Settling Banks and AIP Settlement.

NSCC proposes to amend Section 9 of Rule 55 and Section D.1 of Procedure VIII to add new subsection (e) which would provide that the Settlement Agent would attempt to contact the NSCC Settling Bank if no acknowledgment or notice of refusal to settle on

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Settling Bank may not refuse to settle for itself. See p. 18 of the Settlement Service Guide, supra, note 15. As set forth below, NSCC is proposing to codify the practice in the Rules with respect to Members by adding a statement that a Settling Bank that is a Member may not refuse to settle for itself in Section D.1 of Procedure VIII. Therefore, proposed subsections (c) and (e) would not apply to such Settling Banks.



behalf of one or more NSCC Member or AIP Non-Member Fund, as applicable, for which it is designated as the NSCC Settling Bank is received by the AIP Acknowledgment Cutoff Time or Acknowledgment Cutoff Time, as applicable. The new subsections would provide that if (i) the Settlement Agent is able to contact the NSCC Settling Bank and (ii) the NSCC Settling Bank notifies the Settlement Agent that it cannot, at that time, acknowledge or refuse their settlement balance, then the NSCC Settling Bank will not be deemed to have acknowledged its settlement balance. The new subsections would provide that if the NSCC Settling Bank cannot be reached, the NSCC Settling Bank will be deemed to have acknowledged its settlement balance. In the new subsection (e) of Section D.1 of Procedure VIII, NSCC would also state that the new proposed subsection (e) would not apply to a Settling Bank that settles solely for its own account and opts not to acknowledge its settlement balance.<sup>24</sup> As discussed in more detail below, the new subsection (e) of Section 9 of Rule 55 and Section D.1 of Procedure VIII would also contain a provision relating to NSCC's ability to exclude an NSCC Settling Bank's settlement balances from the NSS file if the NSCC Settling Bank has not acknowledged or been deemed to have acknowledged its settlement balance under certain circumstances.

NSCC proposes to add a new subsection (g) of Section 9 in Rule 55 and a new subsection (g) of Section D.1 of Procedure VIII which would provide the Settlement Agent uses the most recent contact information provided by the NSCC Settling Bank to the Settlement Agent. These proposed subsections would also include a requirement that

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<sup>24</sup> Section D.1 of Procedure VIII provides that Settling Bank that is a Member and settles solely for its own accounts may opt to not acknowledge its settlement balance. Section D.1 of Procedure VIII, supra, note 3.

each NSCC Settling Bank maintains up-to-date and accurate contact details with the Settlement Agent on an ongoing basis.

NSCC proposes to delete language in Section D.1 of Procedure VIII that states that if NSCC has not received funds from the Settling Bank with a net-net debit and the Settling Bank has not sent refusal messages and/or an acknowledgment message to NSCC by the deadline, NSCC begins failure to settle procedures in respect to the Settling Bank at this time. NSCC is proposing to delete this language to reflect the new passive acknowledgment process.

- (ii) **Amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category.**

The proposed change would amend the definition of AIP Settling Bank to correspond with the definition of Settling Bank and remove AIP Settling Bank Only Member as a membership category. AIP Settling Bank is currently defined as either (i) an AIP Member which is a bank or trust company meeting certain criteria or (ii) an AIP Settling Bank Only Member meeting certain criteria and which have entered into an effective Appointment of AIP Settling Bank and AIP Settling Bank Agreement. Since the inception of AIP, AIP Members have used (a) Members that are banks or trust companies meeting certain criteria and (b) Settling Bank Only Members meeting certain criteria and which have entered into Appointments of AIP Settling Bank and AIP Settling Bank Agreements as AIP Settling Banks. Since the inception of AIP, there have been no AIP Members that have acted as AIP Settling Banks and there have been no entities that have become AIP Settling Bank Only Members.

The proposed change would amend the definition of AIP Settling Bank in Rule 1 to provide that an AIP Settling Bank would be either (i) a Member which is a bank or

trust company meeting certain criteria or (ii) a Settling Bank Only Member meeting certain criteria and which has entered into an effective Settling Bank Agreement which would be identical to the definition of Settling Bank. The definition of Settling Bank Agreement distinguishes between Settling Banks and AIP Settling Banks by indicating that in the Settling Bank Agreement entered into by an AIP Settling Bank, the AIP Settling Bank undertakes to perform settlement services for the AIP Member or the AIP Non-Member Fund which is a party thereto whereas Settling Banks make such undertakings with respect to Members and Limited Members that are not AIP Members. In addition, NSCC would delete the definition of AIP Settling Bank Only Member in Rule 1 and remove the term throughout the Rules, including a description of AIP Settling Bank Only Members in Section 2.(ii)(i) of Rule 2. NSCC would also change the reference to 2.(ii)(i) of Rule 2 in the definition of AIP Settling Bank to 2.(ii)(f) of Rule 2 to reflect that is referring to a Member which would qualify as a Settling Bank Only Member rather as an AIP Settling Bank Only Member. In addition, NSCC would amend Section 5 of Rule 3 to provide that NSCC shall maintain a list of Members and Settling Bank Only Members that have agreed to act as AIP Settling Banks to reflect that AIP Members would use Members and Settling Bank Only Members as AIP Settling Banks, as discussed above. Section 1 of Rule 55 would also be amended to reflect that an AIP Settling Bank shall be a Member or a Settling Bank Only Member. Addendum B would be amended to remove the references to AIP Settling Bank Only Members and to delete

Section 11 which relates to membership requirements for AIP Settling Bank Only Members.

**(iii) Codify certain settlement processes**

The proposed rule change would codify certain settlement processes that are currently being used by NSCC.

Proposed change to codify certain settlement processes for AIP Settlement

Currently there are a number of settlement processes used in AIP Settlement that are not explicitly set forth in the Rules. These processes are the same processes that are set forth in the Section D.1 of Procedure VIII with respect to EOD Settlement and would be added in Section 9 of Rule 55 as follows:

- A statement that DTC will act as Settlement Agent for NSCC and the AIP Settling Banks in a new subsection (b)
- A requirement that AIP Settling Banks must acknowledge by the AIP Acknowledgment Cutoff Time via the terminal system their AIP Debit Balance and their AIP Credit Balance and their intention to settle or refusal to settle by the AIP Acknowledgment Cutoff Time in a new subsection (b); as proposed above, there would be an AIP Acknowledgment Cutoff Time with respect to AIP Settlement for the AIP Debit Balances and the AIP Credit Balances.
- A statement that if the AIP Settling Bank has an AIP Debit Balance, then the AIP Settling Bank's account at the Federal Reserve Bank will be debited; if the AIP Settling Bank has an AIP Credit Balance, then the AIP Settling Bank's Federal Reserve Bank account will be credited in new subsection (c)

- A statement that if the AIP Settling Bank sends a refusal message it must acknowledge its new AIP Debit Balance and AIP Credit Balance by the AIP Acknowledgment Cutoff Time via the terminal system and its intention to settle in new subsection (d)
- A statement that the AIP Settling Bank that cannot send an acknowledgment or refusal message may contact the Settlement Agent and instruct the Settlement Agent to act on its behalf in new subsection (f)

Proposed change to allow NSCC to exclude NSCC Settling Bank balance from NSS file

The proposed rule change would provide that if (1) passive acknowledgment does not apply because the NSCC Settling Bank has notified the Settlement Agent that it cannot yet acknowledge or refuse its settlement balance and (2) the payment deadline established by NSCC is approaching, then NSCC would have the ability to exclude the NSCC Settling Bank's settlement balance from the NSS file. This would allow settlement to be completed for the other NSCC Settling Banks that are part of the NSS file. As described above, as it gets closer to the payment deadline, NSCC may need to remove the NSCC Member's balance from the NSS file in order to allow settlement to be completed for the other NSCC Settling Banks that are part of the NSS file. As NSCC would be codifying its current practice with this proposed rule change, this proposed change would not change the current settlement process of NSCC Settling Banks that are excluded from the NSS file.

This proposed change is reflected in the second paragraph of new subsection (e) of Section 9 of Rule 55 and new subsection (e) of Section D.1 of Procedure VIII.

(iv) **Proposed technical, clarifying and conforming changes**

NSCC is proposing to make the following technical, clarifying and conforming changes in the Rules to better clarify the meaning of certain provisions and to be consistent with other provisions in the Rules:

- Remove the space after “Section 2.” in the new proposed reference to “Section 2. (ii)(f)” in two places in the definition of AIP Settlement Bank in Rule 1 for clarity
- Add a definition of “FRB” as the Board of Governors of the Federal Reserve System and each Federal Reserve Bank, as appropriate, to reflect the usage of FRB in the Rules
- Add a definition of FRBNY as the Federal Reserve Bank of New York, to reflect the usage of FRBNY in the Rules
- Change the reference of “2. (ii)(j)” to “2.(ii)(i)” in the definition of Investment Manager/Agent Member in Rule 1 to reflect the proposed renumbering of that section
- Add AIP Settling Banks in the definition of Settlement Agent in Rule 1 to clarify that the Settlement Agent also acts on behalf of AIP Settling Banks with respect to AIP Settlement
- Add quotation marks to TPP Member in the definition of Third Party Provider Member to conform usage of quotation marks in other defined terms in the Rules
- Change the reference of “2. (ii)(k)” to “2.(ii)(j)” in the definition of Third Party Provider Member in Rule 1 to reflect the proposed renumbering of that section

- Renumber Sections 2.(ii)(j) and 2.(ii)(k) to reflect the deletion of AIP Settling Bank Only Member in Section 2.(ii)(i)
- Add “Rule 55” in Section 7(a) of Rule 53 to acknowledge that certain AIP settling processes are set forth in Rule 55
- Add subsection references to Section 9 of Rule 55 for clarity
- Replace “the Procedures” with “Section 9 above” in Section 10 of Rule 55 to reflect that the manner and time specified for AIP Refusal is set forth in Section 9 of Rule 55
- Change “Refusal” to “AIP Refusal” in Sections 10, 11 and 12 of Rule 55 to reflect the proper defined term for refusals with respect to AIP Settlement
- Add “or the Settlement Agent” in two places in Section 10 of Rule 55 to reflect that the bank used for settlement and the manner of payment of settlement may be specified by NSCC or the Settlement Agent
- Remove “provided in the Procedures” and “in the Procedures” and add “specified in accordance with settlement procedures adopted by the Corporation or the Settlement Agent” in Section 10 of Rule 55 to reflect that the bank account and manner of payment may be specified in settlement procedures adopted by NSCC or the Settlement Agent
- Replace “net debit” and “debit balance” with “AIP Debit Balance” in Section 10 of Rule 55 to reflect the existing defined term
- Add “settlement” before “procedures” in Section 10 of Rule 55 to clarify that the reference is to settlement procedures

- Change “Settling Bank” to “AIP Settling Bank” in Section 11 of Rule 55 to reflect the proper defined term for settling banks with respect to AIP Settlement
- Change “Settling AIP Bank” to “AIP Settling Bank” in Section 12 of Rule 55 to reflect the proper defined term
- Add a defined term “Settlement Member” in new subsection (a) in Section D.1 of Procedure VIII which would be a Member, Mutual Fund/Insurance Service Member, Insurance Carrier/Retirement Service Member or Fund Member for which a Settling Bank is the designated Settling Bank to replace the reference to “each of its participant’s accounts”
- Add a defined term “Settlement Balance” in new subsection (a) in Section D.1. of Procedure VIII which would be the Settling Bank’s final settlement balance and replace the phrase “settlement figure” with “settlement balance” to reflect usage elsewhere when referring to the settlement balance
- Replace “NSCC” with “Settlement Agent” in new subsection (b) in D.1 of Procedure VIII to reflect that the Settling Banks acknowledge to the Settlement Agent their intention to settle
- Replace “settlement figures” with “Settlement Balances” in new subsection (b) in Section D.1. of Procedure VIII to reflect the new defined term
- Replace the list of Members and Limited Members that may use a Settling Bank with the new defined term “Settlement Members” in new subsection (b) in Section D.1 of Procedure VIII to reflect the new defined term.



- Remove the sentence in new subsection (b) in D.1 of Procedure VIII that states that an acknowledgment must be sent even if the Settling Bank has wired the amount of its net net debit prior to the cut off time because the statement is unnecessary as it is unlikely that situation would occur
- Add a statement in new subsection (b) in D.1 of Procedure VIII to codify current practice set forth in the Settlement Service Guide with respect to Participants that applies to Members that a Settling Bank that is a Member may not refuse to settle for itself
- Revise new subsection (f) in Section D.1. of Procedure VIII to remove outdated references to NSCC, the telephone as the only means of contact and a number for Settlement Operations in the membership directory to reflect the current procedures such that a Settling Bank that cannot send an acknowledgment or refusal message may contact the Settlement Agent and instruct the Settlement Agent act on its behalf
- Replace “NSCC” with “Settlement Agent” in two places in new subsection (h) in Section D.1 of Procedure VIII to reflect that Settling Banks send their acknowledgments to the Settlement Agent
- Replace “this time” with “the settlement deadline” in the new subsection (h) in Section D.1 of Procedure VIII to clarify that it is referring to the settlement deadline
- Replace the list of Members and Limited Members for which a Settling Bank may send a refusal with “Settlement Member” to reflect the proposed new defined term in the new subsection (i) in Section D.1 of Procedure VIII

- Replace “Corporation” with “Settlement Agent” in new subsection (j) in Section D.1 of Procedure VIII to reflect that the Settlement Agent will receive funds and initiate payments to Settling Banks
- Replace “Federal Reserve Bank’s National Settlement Service” with “NSS” in Section D.2. of Procedure VIII to reflect that NSCC is proposing to move the defined term NSS earlier in the Rules
- Capitalize “balance” in Section D.2. of Procedure VIII to reflect the new defined term Settlement Balance
- Make “Settlement” lowercase in Section D.3 of Procedure VIII to reflect that Settlement is not a defined term
- Add the word “operations” before “department” in Section D.3 of Procedure VIII to reflect that the name of the department is the settlement operations department
- Capitalize “settlement balance” in Section D.3 of Procedure VIII to reflect the new defined term

## 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 this proposal is consistent with Section 17A(b)(3)(F) of the Act.<sup>25</sup>

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<sup>25</sup> 15 U.S.C. 78q-1(b)(3)(F).

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.<sup>26</sup> The EOD Settlement and AIP Settlement processes at NSCC reflect cash debits and credits of payments that are associated with securities transactions that will ultimately be subject to securities settlement. NSCC believes that failure by an NSCC Settling Bank to timely acknowledge that it will settle its settlement balance with NSCC or to refuse to pay its settlement balance creates uncertainty with respect to the timely completion of settlement at NSCC. NSCC believes that the introduction of the proposed passive acknowledgment process described in Item II.(A)1.(i) above would help promote the prompt and accurate clearance and settlement of securities transactions in circumstances where an NSCC Settling Bank has not responded by the Acknowledgment Cutoff Time or the AIP Acknowledgment Cutoff Time, as applicable, and cannot be reached by the Settlement Agent. In such circumstances, as described above, NSCC would deem that such NSCC Settling Bank has acknowledged that it will settle settlement balances. This would enable NSCC to submit the NSS file (through the Settlement Agent) as is for processing in a timely manner, and thereby enhance certainty with respect to the timely completion of settlement. Timely completion of such settlement at NSCC for as many members as possible promotes the prompt and accurate clearance and settlement of securities transactions as a general matter, because the EOD Settlement and AIP Settlement processes at NSCC involve debits and credits that will ultimately be subject to securities settlement. As such, NSCC believes the proposed change to introduce the passive acknowledgment process described in Item II.(A)1.(i) above is designed to

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<sup>26</sup>

Id.

promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>27</sup>

NSCC also believes that the proposal to (a) amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category described in Item II.(A)1.(ii) above and (b) codify certain settlement processes for AIP Settlement described in Item II.(A)1.(iii) above are designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>28</sup> As discussed above settling banks used for AIP Settlement have historically been Members or Settling Bank Only Members and not AIP Members or AIP Settling Bank Only Members. In addition, there have been no entities that have become AIP Settling Bank Only Members. The existing processes related to AIP Settlement that are being added as described in Item II.(A)1.(iii) above are existing processes in AIP Settlement. NSCC believes that in each case making such provisions explicit in the Rules is consistent with Section 17(A)(b)(3)(F) of the Act<sup>29</sup> because such changes would enhance the clarity and transparency of the Rules with respect to AIP Settlement. By enhancing the clarity and transparency of the Rules, the proposed changes would allow AIP Members and AIP Non-Member Funds to more efficiently and effectively conduct their business in accordance with the Rules, which NSCC believes would promote the prompt and accurate clearance and settlement of securities transactions. As such, NSCC

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<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.

believes that the proposed changes would be consistent with Section 17A(b)(3)(F) of the Act.<sup>30</sup>

NSCC also believes that the proposal to codify NSCC's ability to exclude an NSCC Settling Bank's balance from the NSS file described in Item II.(A)1.(iii) above is designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>31</sup> If an NSCC Settling Bank notifies the Settlement Agent that it cannot yet acknowledge or refuse, NSCC would not be able to submit the NSS file (through the Settlement Agent) with that NSCC Settling Bank's settlement balance included. If the NSCC Settling Bank does not ultimately respond with either an acknowledgment or refusal, then NSCC must have the ability to exclude such NSCC Settling Bank's settlement balance from the NSS file. In this way, settlement can be completed for all other NSCC Members. Therefore, NSCC believes the proposed changes to codify NSCC's ability to exclude an NSCC Settling Bank's balance from the NSS file described in in Item II.(A)1.(iii) above is designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>32</sup>

NSCC also believes that the proposed rule changes to make the technical, clarifying and conforming changes, as described in Item II.(A)1.(iv) above, are designed to promote the prompt and accurate clearance and settlement of securities transactions by ensuring that the Rules remain clear and accurate to NSCC Members and that NSCC

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<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id.

Members understand EOD Settlement and AIP Settlement. Having clear and accurate Rules would facilitate members' understanding of those Rules and provide members with increased predictability and certainty regarding their obligations. As such, NSCC believes these proposed changes would promote the prompt and accurate clearance and settlement of securities, consistent with Section 17A(b)(3)(F) of the Act.<sup>33</sup>

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

NSCC does not believe that the proposed rule changes described in Item II.(A)1.(i) above to introduce the passive acknowledgment process for NSCC Settling Banks would have any impact on competition,<sup>34</sup> because the proposed passive acknowledgment process would not have an impact on the NSCC Settling Banks' current ability to timely acknowledge their settlement balances, as it is intended to address situations where an NSCC Settling Bank is not responding and cannot be reached. If an NSCC Settling Bank notifies the Settlement Agent that the NSCC Settling Bank cannot, at that time, submit its acknowledgment that it will settle its settlement balances with NSCC or its refusal to pay its settlement balances, then the NSCC Settling Bank would not be deemed to have acknowledged that it will settle such settlement balances with NSCC. Therefore, NSCC believes that the proposed passive acknowledgment process described in Item II.(A)1.(i) above would not have any impact on competition.

NSCC also does not believe that the proposal to amend the definition of "AIP Settling Bank" to correspond with the definition of "Settling Bank" and remove AIP Settling Bank Only Member as a membership category described in Item II.(A)1.(ii)

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<sup>33</sup> Id.

<sup>34</sup> 15 U.S.C. 78q-1(b)(3)(I).

above would have any impact on competition<sup>35</sup> because settling banks used for AIP Settlement have historically been Members or Settling Bank Only Members and not AIP Members or AIP Settling Bank Only Members. In addition, there have been no entities that have become AIP Settling Bank Only Members. As such NSCC does not believe the proposed changes to (a) amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category described in Item II.(A)1.(ii) above would affect the rights or obligations of NSCC or NSCC Members or have any impact on competition.

NSCC also does not believe that the proposed changes to exclude an NSCC Settling Bank’s balance from the NSS file, as described in Item II.(A)1.(iii) above, would have any impact on competition<sup>36</sup> because this proposal, if invoked, would require the affected NSCC Settling Bank to send payment to NSCC by wire, which is an alternate form of payment already available to the NSCC Settling Banks. NSCC believes that ready availability of a reasonable payment alternative would result in the rights and obligations of the NSCC Settling Banks not being adversely affected. As such, NSCC does not believe that the proposed changes to exclude an NSCC Settling Bank’s balance from the NSS file, as described in Item II.(A)1.(iii) above, would have any impact on competition.

NSCC also does not believe that the proposed rule changes to codify the AIP Settlement processes described in Item II.(A)1.(iii) or to make the technical, clarifying and conforming changes described in Item II.(A)1.(iv) above would have an impact on

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<sup>35</sup> Id.

<sup>36</sup> Id.

competition.<sup>37</sup> These changes would simply provide additional clarity within the Rules and not affect NSCC Members' rights and obligations.

(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-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 not to respond to any comments received.

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

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<sup>37</sup>

Id.



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:

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

should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

#### 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-2021-013 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-2021-013. 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-2021-013 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>38</sup>

Secretary

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<sup>38</sup> 17 CFR 200.30-3(a)(12).



## RULES & PROCEDURES

TEXT OF PROPOSED RULE CHANGE

**Bold and underlined text** indicates proposed added language.

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

NATIONAL SECURITIES CLEARING CORPORATION RULES

RULE 1. DEFINITIONS AND DESCRIPTIONS

Accounting Operation

The term “Accounting Operation” includes the ACATS Settlement Accounting Operation, Balance Order Accounting Operation, the Foreign Security Accounting Operation and the CNS Accounting Operation.

**Acknowledgment Cutoff Time**

**The term “Acknowledgement Cutoff Time” means the time set forth as the Acknowledgment Cutoff Time in the DTC Settlement Service Guide which can be found on NSCC’s Website at <https://www.dtcc.com/legal/rules-and-procedures>.**

\* \* \*

*Affiliate*

The term “Affiliate” means a Person that controls or is controlled by or is under common control with another Person. Control of a Person means the direct or indirect ownership or power to vote more than 50% of any class of the voting securities or other voting interests of any Person.

**AIP Acknowledgment Cutoff Time**

**The term “AIP Acknowledgement Cutoff Time” means, with respect to each AIP Settling Bank regarding AIP Settlement of AIP Debit Balances and AIP Credit Balances, the later of (i) 30 minutes after the AIP Settling Bank has been notified of its AIP Debit Balance or AIP Credit Balance (or, the new AIP Debit Balance or new AIP Credit Balance, if readjusted as set forth herein), as applicable, and (ii) 30 minutes prior to the settlement deadlines established by the Corporation. The Corporation shall post the settlement deadlines for AIP Settlement on the NSCC Website.**

\* \* \*

*AIP Settling Bank*

The term “AIP Settling Bank” means

(1) ~~an AIP~~ Member which is a bank or trust company which would otherwise qualify under Section 2.-(ii)(~~if~~) of Rule 2 and Rule 2A and which is a party to an effective Settling Bank Agreement, or

(2) ~~an AIP~~ Settling Bank Only Member which has qualified under Section 2.-(ii)(~~if~~) of Rule 2, Rule 2A and Addendum B and which is a party to an effective Settling Bank

Agreement.

***AIP Settling Bank Only Member***

~~The term AIP “Settling Bank Only Member” means a Person who is specified in Section 2(ii)(i) of Rule 2 and which has qualified pursuant to the provisions of Rule 2A.~~

\* \* \*

***Foreign Security System***

The term “Foreign Security System” means the method of accounting for and settling securities transactions provided for in these Rules.

**FRB**

**The term “FRB” means the Board of Governors of the Federal Reserve System and each Federal Reserve Bank, as appropriate.**

**FRBNY**

**The term “FRBNY” means the Federal Reserve Bank of New York.**

\* \* \*

***Investment Manager/Agent Member***

The term “Investment Manager/Agent Member” means any Person who is specified in Section 2.-(ii)(~~ji~~) of Rule 2 and has qualified pursuant to the provisions of Rule 2A.

\* \* \*

***Settlement Agent***

The term “Settlement Agent” means the bank or trust company that the Corporation may, from time to time, designate to act as its agent for purposes of receiving money settlement debit amounts from Settling Banks, **AIP Settling Banks** and participants and paying money settlement credit amounts to Settling Banks, **AIP Settling Banks** and participants.

\* \* \*

***Third Party Provider Member***

The term “Third Party Provider Member” (or “TPP Member”) means any Person that acts as a routing platform for financial intermediaries, who is specified in Section 2.(ii)(~~jk~~) of Rule 2 and has qualified pursuant to the provisions of Rule 2A.

\* \* \*

## RULE 2. MEMBERS AND LIMITED MEMBERS

\* \* \*

### SEC. 2. Membership Types

The Corporation shall have the following membership types:

(i) Member -

A Member, unless otherwise limited by the Corporation pursuant to these Rules, may generally access all services made available by the Corporation. Only Members shall be entitled to settle contracts through the Corporation and to participate in the Comparison and Recording Operation and Accounting Operation.

(ii) Limited Members -

In addition to Members, upon the request of an applicant, the Corporation may approve an application by a Person to become a Limited Member, whose use of the Corporation's services is limited to those services specified by the Corporation. Such Limited Members will be termed as follows:

\* \* \*

~~(i) **AIP Settling Bank Only Member**~~

~~**Undertaken to perform settlement services with respect to AIP Settlement on behalf of AIP Members and/or AIP Non Member Funds.**~~

~~(j) Investment Manager/Agent Member –~~

~~Participates in the Corporation's Mutual Fund Services as or on behalf of one or more investment managers to a managed account or similar program.~~

~~(k) Third Party Provider Member –~~

~~Participates in the Corporation's Mutual Fund Services as a routing platform for financial intermediaries.~~

\* \* \*

## RULE 2B. ONGOING MEMBERSHIP REQUIREMENTS AND MONITORING

\* \* \*

### SEC. 3. OPERATIONAL TESTING

(a) The Corporation may, from time to time, determine those Members, Fund Members, Insurance Carrier/Retirement Services Members, Municipal Comparison Only Members, Mutual Fund/Insurance Services Members, Data Services Only Members, Settling Bank Only Members, Investment Manager/Agent Members, AIP Members, ~~AIP Settling Bank Only Members~~, Third Party Provider Members and Third Party Administrator Members (collectively, “participants”) who shall be required to fulfill, within the time frames established by the Corporation, certain operational testing requirements (the scope of such testing to be determined by the Corporation in its sole discretion) and related reporting requirements (such as reporting the test results to the Corporation in a manner specified by the Corporation) that may be imposed by the Corporation to ensure the continuing operational capability of the participant. The Corporation may assess a fine upon those participants that fail to fulfill any such operational testing and related reporting requirements within the time frames established by the Corporation.

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### RULE 3. LISTS TO BE MAINTAINED

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SEC. 5. The Corporation shall maintain a list of AIP Members and AIP Eligible Products as referenced in Rule 53. The Corporation shall maintain a list of ~~AIP Settling Bank~~ Members and ~~AIP~~ Settling Bank Only Members that have agreed to act as AIP Settling Banks.

\* \* \*

### RULE 37. HEARING PROCEDURES

SEC. 1. A Member, a Mutual Fund/Insurance Services Member, Settling Bank Only Member, Municipal Comparison Only Member, Insurance Carrier/Retirement Services Member, TPA Member, TPP Member, Investment Manager/Agent Member, Fund Member, a Data Services Only Member, AIP Member or ~~AIP Settling Bank Only Member~~ or applicant (each hereinafter in this Rule referred to as the “Interested Person”) may, when permitted by these Rules, request a hearing by filing with the Secretary of the Corporation within five business days from the date on which the Corporation informed it of an action or proposed action of the Corporation with respect to the Interested Person, or 2 business days in the case of summary action taken against the Interested Person pursuant to Rule 46 (or such other applicable time period specified by these Rules), a written request for a hearing setting forth (i) the action or proposed action of the Corporation with respect to which the hearing is requested and (ii) the name of the representative of the Interested Person who may be contacted with respect to the hearing. Within 7 business days after the Interested Person files such written request with the Corporation, or 3 business days in the case of summary action

taken against the Interested Person pursuant to Rule 46, the Interested Person shall submit to the Corporation a clear and concise written statement setting forth with particularity the action or proposed action of the Corporation with respect to which the hearing is requested, the basis for objection to such action, whether the Interested Person intends to attend the hearing and whether the Interested Person chooses to be represented by counsel at the hearing. If the written statement contests the Corporation's determination that the Interested Person has violated a Rule or procedure, the statement must specifically admit or deny each violation alleged and detail the reasons why the Rules or procedures alleged to have been violated are being contested. Any alleged violation not specifically denied shall constitute an admission to that violation. The Corporation may deny the statement if it fails to set forth a prima facie basis for contesting the violation. The failure of the Interested Person to file the written request referred to above within the time period required by these Rules and/or the failure of the Interested Person to submit the written statement within the time period specified above will be deemed to be an election to waive the right to a hearing. The Corporation shall notify the Interested Person in writing of the date, place and hour of the hearing at least 5 business days prior to the hearing (unless the parties agree to waive the 5 business day requirement).

\* \* \*

#### RULE 42. WIND-DOWN OF THE CORPORATION

\* \* \*

"Limited Member" means a Limited Member of the Corporation (other than a Settling Bank Only Member ~~or an AIP Settling Bank Only Member~~) or a Limited Member of the Transferee (other than a Settling Bank Only Member ~~or an AIP Settling Bank Only Member~~), as the context requires.

\* \* \*

"Settling Bank" means a Settling Bank, Settling Bank Only Member ~~or~~ AIP Settling Bank ~~or AIP Settling Bank Only Member~~ for Members and Limited Members of the Corporation or a Settling Bank, Settling Bank Only Member ~~or~~ AIP Settling Bank ~~or AIP Settling Bank Only Member~~ for Members and Limited Members of the Transferee, as the context requires.

\* \* \*

#### RULE 53. ALTERNATIVE INVESTMENT PRODUCT SERVICES AND MEMBERS

##### SEC. 7. Settlement of AIP Payments

(a) The Corporation may provide a facility for the settlement of AIP Payments pursuant to such settlement procedures as the Corporation shall adopt. AIP Payments may include amounts to be transmitted in respect of subscriptions and purchases; redemptions, withdrawals and tender offers; commissions and other transaction fees;



distributions; exchange transactions; transfers; and such other transactions in connection with the processing and settlement of transactions in Eligible AIP Products as the Corporation may determine from time to time. Settlement of AIP Payments through the Corporation shall be in same day funds, effected in accordance with the provisions of this Rule, **Rule 55** and such procedures as the Corporation may establish from time to time. The Corporation shall not guarantee the payment of AIP Payments to any AIP Member (including to any AIP Fund Administrator's AIP Settling Sub-Account). For the avoidance of doubt, the Corporation shall not guarantee the payment of AIP Payments to any AIP Non-Member Fund. Settlement of all payments and transactions in respect of Eligible AIP Products which do not settle through the facilities of the Corporation are the responsibility of the parties thereto and are not subject to the provisions of this Rule.

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#### RULE 55. SETTLING BANKS AND AIP SETTLING BANKS

SEC. 1. A Settling Bank shall be a Member or a Settling Bank Only Member. An AIP Settling Bank shall be a Member or ~~an AIP~~ Settling Bank Only Member. Each Settling Bank agrees to abide by these Rules and Procedures and shall enter into a Settling Bank Agreement with the Corporation and each Member, Mutual Fund/Insurance Services Member, Insurance Carrier/Retirement Services Member and Fund Member which the Settling Bank represents. Each AIP Settling Bank agrees to abide by these Rules and Procedures and shall enter into a Settling Bank Agreement with the Corporation and each AIP Member and AIP Non-Member Fund (with respect to AIP Settling Sub-Accounts) which the AIP Settling Bank represents.

\* \* \*

SEC. 9. **(a)** Each AIP Settling Bank shall settle with the Corporation on a gross basis on each Business day: the AIP Debit Balance and AIP Credit Balance (or, if applicable, the AIP Adjusted Credit Balance) of each AIP Member and AIP Non-Member Fund which settles through such AIP Settling Bank. Each AIP Debit Balance of each AIP Member and each AIP Non-Member Fund which settles through the same AIP Settling Bank and has a AIP Debit Balance on that business day will be aggregated with the AIP Debit Balance on that business day of the AIP Settling Bank itself, if any, and all such balances will be aggregated to a single gross debit balance for the AIP Settling Bank for that business day. Each AIP Credit Balance (or if applicable, AIP Adjusted Credit Balance) of each AIP Member and each AIP Non-Member Fund which settles through the same AIP Settling Bank and has an AIP Credit Balance (or, if applicable AIP Adjusted Credit Balance) on that business day will be aggregated with the AIP Credit Balance (or AIP Adjusted Credit Balance, as applicable) on that business day of the AIP Settling Bank itself, if any, and all such balances shall be aggregated to a single gross credit balance for the AIP Settling Bank for that business day. Throughout each business day the Corporation will provide each AIP Settling Bank with reports of the debit balance or credit balance in the AIP settlement account of each AIP Member (including AIP Settling Sub-Account) which the AIP Settling Bank represents and the

arithmetic sum of these amounts. The AIP Settling Bank will be responsible for collecting the AIP Debit Balances from, and paying the AIP Credit Balances (or, if applicable, the AIP Adjusted Credit Balances) to AIP Members and AIP Non-Member Funds represented by the AIP Settling Bank.

**(b) DTC will act as “Settlement Agent” (as that term is used in the Federal Reserve Board’s Operating Circular 12 and in the Corporation’s Rules & Procedures) for the Corporation and the AIP Settling Banks. By the AIP Acknowledgment Cutoff Time, AIP Settling Banks, without exception, must acknowledge to the Settlement Agent via the terminal system their AIP Debit Balance and their AIP Credit Balance and (1) their intention to settle with the Corporation their AIP Debit Balance and their AIP Credit Balance by the settlement deadlines, or (2) their refusal to settle for particular AIP Members or AIP Non-Member Funds.**

**(c) If an AIP Settling Bank does not, by the AIP Acknowledgement Cutoff Time, either: (i) affirmatively acknowledge its AIP Debit Balance and AIP Credit Balance or (ii) notify the Settlement Agent that it refuses to settle for one or more AIP Members or AIP Non-Member Funds for which it is the designated AIP Settling Bank, then, at the AIP Acknowledgement Cutoff Time, the AIP Settling Bank is deemed to have acknowledged its AIP Debit Balance and AIP Credit Balance. If the AIP Settling Bank has an AIP Debit Balance, then the AIP Settling Bank’s account at the FRB will be debited; if the AIP Settling Bank has an AIP Credit Balance, then the AIP Settling Bank’s FRB account will be credited.**

**(d) If the AIP Settling Bank sends refusal messages for one or more AIP Members or AIP Non-Member Funds for which it is the designated AIP Settling Bank, the Settlement Agent shall remove from the AIP Debit Balance and AIP Credit Balance the settlement balance(s) of the AIP Member(s) or AIP Non-Member Fund(s) for which the Settling Bank has refused to settle, and will provide the AIP Settling Bank with a new AIP Credit Balance and AIP Debit Balance. The AIP Settling Bank must acknowledge to the Settlement Agent by the AIP Acknowledgement Cutoff Time via the terminal system its new AIP Debit Balance and AIP Credit Balance and its intention to settle such amounts with the Corporation by the settlement deadlines. This new AIP Debit Balance and AIP Credit Balance shall be subject to subsection (c) above.**

**(e) The Settlement Agent will attempt to contact the AIP Settling Bank if no acknowledgment or notice of a refusal to settle is received by the AIP Acknowledgement Cutoff Time. If (x) the Settlement Agent is able to contact the AIP Settling Bank, and (y) the AIP Settling Bank notifies the Settlement Agent that it cannot, at that time, acknowledge or refuse its AIP Debit Balance and AIP Credit Balance, then the Settling Bank will not be deemed to have acknowledged its AIP Debit Balance and AIP Credit Balance. If the AIP Settling Bank cannot be reached, the AIP Settling Bank will be deemed to have acknowledged its AIP Debit Balance and AIP Credit Balance.**

**The Corporation may exclude an AIP Settling Bank's AIP Debit Balance and AIP Credit Balance from the FRB's National Settlement Service ("NSS") file if the AIP Settling Bank (A) does not acknowledge its AIP Debit Balance and AIP Credit Balance by the AIP Acknowledgement Cutoff Time or does not acknowledge its new AIP Debit Balance and AIP Credit Balance pursuant to subsection (d) above by the AIP Acknowledgement Cutoff Time and (B) is not deemed to have acknowledged its AIP Debit Balance and AIP Credit Balance or its new AIP Debit Balance and AIP Credit Balance pursuant to subsection (d) above because the AIP Settling Bank has notified the Settlement Agent that it is unable to affirmatively acknowledge its AIP Debit Balance and AIP Credit Balance or that it refuses to settle on behalf of an AIP Members or AIP Non-Member Funds.**

**(f) An AIP Settling Bank that cannot send an acknowledgment or refusal message to the Settlement Agent may contact the Settlement Agent and instruct the Settlement Agent to act on its behalf.**

**(g) The Settlement Agent uses the most recent contact information provided by the AIP Settling Bank to the Settlement Agent. Each AIP Settling Bank must ensure that it maintains up-to-date and accurate contact details with the Settlement Agent on an ongoing basis when previously provided contact details are no longer accurate, to facilitate the Settlement Agent's ability to contact an AIP Settling Bank regarding this settlement process and any settlement issues.**

SEC. 10. An AIP Settling Bank may refuse to settle for one or more of its AIP Members and/or AIP Non-Member Funds (but not for less than all of a given AIP Member's or AIP Non-Member Fund's accounts) in the manner and at the time specified in **Section 9 above the Procedures** (an "AIP Refusal"). The AIP Settling Bank shall, if it has an **AIP Debit Balance net debit** remaining after any **AIP Refusal**, pay the amount thereof to the Corporation's account at the bank specified by the Corporation **or the Settlement Agent** and in the manner **provided in the Procedures, and** by the time **specified in accordance with settlement procedures adopted by the Corporation or the Settlement Agent in the Procedures** and the AIP Member or AIP Non-Member Fund for whom the AIP Settling Bank has refused to settle may pay the Corporation, by Fedwire, the amount of its remaining **AIP Debit Balance debit balance** in accordance with **settlement** procedures adopted by the Corporation **or the Settlement Agent**.

SEC. 11. An AIP Member (including an AIP Fund Administrator with respect to its AIP Settling Sub-Accounts) will be deemed to have failed to settle an AIP Debit Balance when the Corporation receives an **AIP Refusal** from the applicable **AIP Settling Bank** and the AIP Member (including the applicable AIP Fund Administrator with respect to its AIP Settling Sub-Accounts or the AIP Non-Member Fund in respect thereof) has failed to pay the AIP Debit Balance (or has so failed to pay its AIP Debit Balance if permitted by the Corporation to settle otherwise than through an AIP Settling Bank) or when its AIP Settling Bank has failed to pay its debit balance by the time specified in the Procedures.

SEC. 12. If an AIP Settling Bank or the AIP Member (including the AIP Fund Administrator with respect to its AIP Settling Sub-Accounts) in the case of an **AIP Refusal**, fails to settle in the manner and at the time prescribed in the Procedures, the Corporation shall reduce the AIP Credit Balances of all contra side AIP Members' accounts (including contra side AIP Settling Sub-Accounts) having an AIP Credit Balance on that business day as a result of transactions with the AIP Member(s) and/or AIP Settling Sub-Account(s) which AIP Debit Balance failed to settle, in accordance with Rule 53 and the Procedures of the Corporation. The ~~Settling~~-AIP **Settling** Bank or AIP Member (including an AIP Fund Administrator with respect to its AIP Settling Sub-Accounts) will not be deemed to have defaulted in a payment obligation to the Corporation. The Corporation may assess penalties against an AIP Settling Bank or, the AIP Member (including the AIP Fund Administrator with respect to its AIP Settling Sub-Accounts) as specified in the Procedures, in the event the AIP Settling Bank or, in the case of an **AIP Refusal**, the AIP Member (including AIP Fund Administrators with respect to AIP Settling Sub-Accounts) fails to settle.

\* \* \*

#### RULE 58. LIMITATIONS ON LIABILITY

\* \* \*

SEC. 2. Notwithstanding any other provision in the Rules:

(a) The Corporation will not be liable for any action taken, or any delay or failure to take any action, hereunder or otherwise to fulfill the Corporation's obligations to its Members, Mutual Fund/Insurance Services Members, Settling Bank Only Members, Municipal Comparison Only Members, Insurance Carrier/Retirement Services Members, Investment Manager/Agent Members, TPP Members, TPA Members, Mutual Fund/Insurance Services Members, Fund Members, Data Services Only Members, **and** ~~AIP Members and AIP Settling Bank Only Members~~ (each hereinafter referred to as a "participant" for purposes of this Rule 58), other than for losses caused directly by the Corporation's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action. Under no circumstances will the Corporation be liable for the acts, delays, omissions, bankruptcy, or insolvency, of any third party, including, without limitation, any depository, custodian, sub-custodian, clearing or settlement system, transfer agent, registrar, data communication service, AIP Non-Member Fund or delivery service ("Third Party"), unless the Corporation was grossly negligent, engaged in willful misconduct, or in violation of Federal securities laws for which there is a private right of action in selecting such Third Party.

\* \* \*

#### RULE 64. DTCC SHAREHOLDERS AGREEMENT

\* \* \*

SEC. 4. This Rule 64 shall have no application to a Data Services Only Member, Settling Bank Only Member, Investment Manager/Agent Member, TPP Member, TPA Member, or AIP Member ~~or AIP Settling Bank Only Member~~.<sup>1</sup>

\* \* \*

## PROCEDURE VIII. MONEY SETTLEMENT SERVICE

\* \* \*

### D. Settling Bank Procedures

#### 1. Settling Bank Obligations

**(a)** Each day at such time as determined by the Corporation, NSCC will make available to Settling Banks the final net-debit or net-credit figure for ~~each of its participant's accounts~~ the account of each Member, Mutual Fund/Insurance Service Member, Insurance Carrier/Retirement Service Member or Fund Member (each, a "Settlement Member") for which it is the designated Settling Bank and the Settling Bank's net-net debit or net-net credit figure. This action initiates the settlement process. If the Settling Bank's final settlement balance figure ("Settlement Balance") is a net-net debit, it should pay that amount in the manner provided in Sections 3 and 4 below to NSCC's Settlement Agent by such time as established by the Corporation.

**(b)** By the Acknowledgment Cutoff Time, Settling Banks, without exception, must acknowledge to the Settlement Agent NSCC via the terminal system their sSettlement figures Balances and (1) their intention to settle with NSCC their net-net settlement amount by the settlement deadline, or (2) their refusal to settle for particular Settlement Members, Mutual Fund/Insurance Services Members, Insurance Carrier/Retirement Services Members and Fund Members. This acknowledgment must be sent even if the Settling Bank has wired the amount of its net net debit prior to the cut off time. Notwithstanding the foregoing, a Settling Bank that is a Member and settles solely for its own accounts may opt, pursuant to such procedures as the Corporation may, from time to time, establish, to not acknowledge its sSettlement bBalance; if such Settling Bank opts to not acknowledge its Settlement Balance, it shall not be

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<sup>1</sup> Note that, if a Fund Member, Insurance Carrier/Retirement Services Member, Municipal Comparison Only Member or Mutual Fund/Insurance Services Member is also a member or participant of another clearing agency subsidiary of DTCC, such Fund Member, Insurance Carrier/Retirement Services Member, Municipal Comparison Only Member or Mutual Fund/Insurance Services Member may be a Mandatory Purchaser Participant pursuant to the terms of the Shareholders Agreement and the rules and procedures of such other subsidiary. If a Data Services Only Member, Settling Bank Only Member, Investment Manager/Agent Member, TPP Member, TPA Member, or AIP Member ~~or AIP Settling Bank Member~~ is also a member or participant of another clearing agency subsidiary of DTCC, such Data Services Only Member, Settling Bank Only Member, Investment Manager/Agent Member, TPP Member, TPA Member, or AIP Member ~~or AIP Settling Bank Only Member~~ may be a Mandatory Purchaser Participant or a Voluntary Purchaser Participant pursuant to the terms of the Shareholders Agreement and the rules and procedures of such other subsidiary.

subject to subsections (c) and (e) below.<sup>2</sup> A Settling Bank that is a Member may not refuse to settle for itself.

(c) If a Settling Bank does not, by the Acknowledgement Cutoff Time, either: (i) affirmatively acknowledge its Settlement Balance or (ii) notify the Settlement Agent that it refuses to settle for one or more for Settlement Members, then, at the Acknowledgement Cutoff Time, the Settling Bank is deemed to have acknowledged its Settlement Balance.

(d) If the Settling Bank sends refusal messages for one or more Settlement Members but not all Settlement Members for which it is the designated Settling Bank, the Settlement Agent shall remove from the Settlement Balance the net settlement balance(s) of the Settlement Member(s) for which the Settling Bank has refused to settle, and will provide the Settling Bank with a new Settlement Balance. The Settling Bank and its new net settlement amount after the refusal is a credit, it must send a message acknowledge to the Settlement Agent by the Acknowledgment Cutoff Time its new Settlement Balance and its intention to settle by the settlement deadlineNSCC immediately after the refusal messages acknowledging that amount. This new Settlement Balance shall be subject to subsection (c) above. If its new net settlement amount is a debit, the Settling Bank must send a message immediately after the refusal messages acknowledging its intention to settle that amount with NSCC by the settlement deadline.

(e) The Settlement Agent will attempt to contact the Settling Bank if no acknowledgment or notice of a refusal to settle is received by the Acknowledgement Cutoff Time. If (x) the Settlement Agent is able to contact the Settling Bank, and (y) the Settling Bank notifies the Settlement Agent that it cannot, at that time, acknowledge or refuse its Settlement Balance, then the Settling Bank will not be deemed to have acknowledged its Settlement Balance. If the Settling Bank cannot be reached, the Settling Bank will be deemed to have acknowledged its Settlement Balance.

The Corporation may exclude a Settling Bank's balance from the NSS file if the Settling Bank (i) does not acknowledge its Settlement Balance by the Acknowledgement Cutoff Time or does not acknowledge its new Settlement Balance pursuant to subsection (d) above by the Acknowledgement Cutoff Time and (ii) is not deemed to have acknowledged its Settlement Balance or its new Settlement Balance pursuant to subsection (d) above because the Settling Bank has notified the Settlement Agent that it is unable to affirmatively acknowledge its Settlement Balance or that it refuses to settle on behalf of a Member, Mutual

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<sup>2</sup> If the Settling Bank is also a settling bank at DTC, then to be eligible for such "opt out", it must also settle at DTC solely for its own accounts, and any such "opt out" must apply to both its NSCC and DTC settlement balances.

**Fund/Insurance Services Member, Insurance Carrier/Retirement Services Member or Fund Member.**

**(f) Note:** A Settling Bank that cannot send an acknowledgment or refusal message to **the Settlement Agent** NSCC may **contact telephone its instructions to the Settlement Agent and instruct the Settlement Agent to act on its behalf** ~~number for Settlement Operations specified in NSCC's notices and membership directory.~~

**(g) The Settlement Agent uses the most recent contact information provided by the Settling Bank to the Settlement Agent. Each Settling Bank must ensure that it maintains up-to-date and accurate contact details with the Settlement Agent on an ongoing basis when previously provided contact details are no longer accurate, to facilitate the Settlement Agent's ability to contact a Settling Bank regarding this settlement process and any settlement issues.**

~~If NSCC has not received funds from the Settling Bank with a net-net debit and the Settling Bank has not sent refusal messages and/or an acknowledgment message to NSCC by the deadline, NSCC begins failure to settle procedures in respect to the Settling Bank at this time.~~

**(h)** A Settling Bank with a net-net debit that has sent an acknowledgment message to **the Settlement Agent** NSCC must settle by the settlement deadline. (See the payment procedure below.) If the Settling Bank has acknowledged its net-net settlement debit and **the Settlement Agent** NSCC has not received funds from the Settling Bank by ~~this time~~ **the settlement deadline**, NSCC begins failure-to-settle procedures in respect to the Settling Bank at this time.

**(i) Note:** A refusal to settle for a **Settlement Member, Mutual Fund/Insurance Services Member, Insurance Carrier/Retirement Services Member or Fund Member** is a refusal to settle all accounts of that participant. The Settling Bank cannot refuse to settle only some of the accounts of a participant with multiple accounts. A Settling Bank that has sent a refusal message must send an acknowledgment of its new net-net settlement amount.

**(j)** At such time as the **Settlement Agent** Corporation has received sufficient funds it will initiate payments to Settling Banks with net-net credits.

## 2. Settlement Agent

DTC provides NSCC with services with respect to NSCC's money settlement operations as described in, and in accordance with, these procedures. DTC will act as "Settlement Agent" (as that term is used in the Federal Reserve Board's Operating Circular 12 and in NSCC's Rules & Procedures) for NSCC and NSCC's Settling Banks, for purposes of (i) receiving and paying, as NSCC's settling bank and for the account of NSCC, end-of-day money settlement payments from or to, as applicable, NSCC Settling Banks and participants, (ii) with respect to **NSS Federal Reserve Bank's ("FRB") National Settlement Service ("NSS")**, as the means of effecting money settlement for NSCC, and (iii) aggregating and netting the Settlement ~~B~~ balance of those Settling Banks that

act as such for both DTC and NSCC participants, and crediting or debiting the account of either NSCC, or DTC, as the appropriate clearing agency, with the settlement amounts determined in accordance with this procedure, as described in item 4 below.

### 3. Settlement Payment By Net-Net Debit Settling Bank

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**Note** – Settling Banks must monitor their Settling Bank Account Statement to ensure that funds have been credited to their account and that no balance exists. The Settling Bank must be prepared to wire payment to the Settlement Agent if funds are not available or if the NSS is unavailable or inoperable. NSCC requires that a bank representative authorized to wire funds be available at the Settling Bank until settlement is complete. If a Settling Bank is experiencing extenuating circumstances and, as a result, needs to opt out of NSS for one business day and send its wire directly to DTC's FRBNY account for its debit balance, that Settling Bank must notify the Settlement operations department prior to acknowledging its Settlement Balance.

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### ADDENDUM B

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### ~~AIP SETTLING BANK ONLY MEMBERS (Section 11)~~

### THIRD PARTY PROVIDER MEMBERS (Section 112)

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### ~~SEC. 11. AIP SETTLING BANK ONLY MEMBERS~~

#### ~~A. Qualification~~

~~To qualify for membership, An AIP Settling Bank Only Member shall be a bank or trust company, including a trust company having limited power, which is a member of the Federal Reserve System or has direct access to the Federal Reserve System.~~

#### ~~B. Financial Responsibility~~

~~The Corporation shall approve an application to become an AIP Settling Bank Only Member only upon a determination by the Corporation that the~~



~~applicant meets the standards of financial responsibility as the Corporation may promulgate.~~

~~C. Operational Capability~~

~~The Corporation shall approve an application to become a Settling Bank Only Member only upon a determination by the Corporation that the applicant meets the standards of operational capability as the Corporation may promulgate.~~

SEC. 112. THIRD PARTY PROVIDER MEMBERS

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