

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95278; File No. SR-NSCC-2022-010)

July 14, 2022

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Fees for the Securities Financing Transaction Clearing Service

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 8, 2022, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to Addendum A (Fee Structure) (“Addendum A”) of NSCC’s Rules & Procedures (“Rules”) to adopt fees for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

NSCC’s securities financing transaction (“SFT”) clearing service (“SFT Clearing Service”), as described below.⁵

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

Overview of the Proposed Rule Change

The purpose of this proposed rule change is to adopt fees for NSCC’s new SFT Clearing Service.⁶ The SFT Clearing Service provides central clearing for SFTs, which are, broadly speaking, transactions where the parties exchange equity securities against

⁵ Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Rules, available at http://dtcc.com/~media/Files/Downloads/legal/rules/nscc_rules.pdf.

⁶ See Securities Exchange Act Release No. 95011 (May 31, 2022), 87 FR 34339 (June 6, 2022) (SR-NSCC-2022-003) (Order Approving Proposed Rule Change to Introduce Central Clearing for Securities Financing Transaction Clearing Service). NSCC also filed the proposal as advance notice SR-NSCC-2022-801. See Securities Exchange Act Release No. 94998 (May 27, 2022), 87 FR 33528 (June 2, 2022) (SR-NSCC-2022-801) (Notice of No Objection to Advance Notice to Introduce Central Clearing for Securities Financing Transaction Clearing Service).

cash and simultaneously agree to exchange the same securities and cash, plus or minus a rate payment, on a future date. The SFT Clearing Service established new membership categories and requirements for Sponsoring Members and Sponsored Members whereby existing Members would be permitted to sponsor certain institutional firms into membership.⁷ The SFT Clearing Service also established a new membership category and requirements for Agent Clearing Members whereby existing Members would be permitted to submit, on behalf of their customers, transactions to NSCC for novation.⁸ The SFT Clearing Service is available for SFTs entered into between (i) a Member and another Member, (ii) a Sponsoring Member and its Sponsored Member (“Sponsored Member Transaction”), and (iii) an Agent Clearing Member acting on behalf of a Customer and either (x) a Member or (y) the same or another Agent Clearing Member acting on behalf of a Customer.⁹

In connection with the SFT Clearing Service, NSCC would establish two new fees for the clearance of SFT transactions: (i) a fee of \$1.00 per side of each new SFT submitted (excluding any Linked SFT¹⁰ and Sponsored Member Transactions) and (ii) a

⁷ See id. and Rule 2C, supra note 5.

⁸ See supra note 6 and Rule 2D, supra note 5.

⁹ See supra note 6 and Section 1 of Rule 56, supra note 5.

¹⁰ A “Linked SFT” is an SFT entered into by the pre-novation SFT Member parties to an SFT that has been previously novated by NSCC, the Final Settlement of which is scheduled to occur on that Business Day (“Settling SFT”), and has the same Transferor, Transferee and subject SFT Securities (including CUSIP) as the Settling SFT. See Rule 1, supra note 5.

fee of \$0.14 per million of outstanding SFT notional balance.¹¹ Under the proposed fee structure, Sponsoring Members would be liable for any fees and charges arising from Sponsored Member Transactions.

In general, fee levels for NSCC are set by NSCC after periodic reviews of a number of factors, including revenues, operating costs, and potential service enhancements. In the case of fees associated with new services such as SFT, however, there are no current or historical data points to use in the analysis. Fees for such services are determined based on an evaluation of the costs associated with developing the service, the projected costs of operating the service on an ongoing basis, and the projected revenues for the service over time under various assumptions.¹² In determining the proposed SFT Clearing Service fees, NSCC attempted to balance a combination of factors, which included maintaining a competitive market level price while also factoring in the enhanced value that the SFT Clearing Service offered to Members (e.g., multiple models for clearing SFTs for Members and their clients, and the associated balance sheet and capital efficiency opportunities) and the ability to achieve the payback of NSCC's

¹¹ For purposes of determining the proposed outstanding SFT notional balance fee, the outstanding SFT notional balance would be calculated using the settlement value of the SFT.

¹² NSCC has in place procedures to control costs and to regularly review pricing levels against costs of operation. NSCC's fees are generally cost-based plus a markup as approved by its Board of Directors. This markup is applied to recover development costs and operating expenses and to accumulate capital sufficient to meet regulatory and economic requirements. The SFT Clearing Service and proposed associated fees, once implemented, would be reviewed and re-evaluated regularly under this framework. See NSCC Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures, available at https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/NSCC_Disclosure_Framework.pdf, at 120.

investment costs within an appropriate timeframe. The proposed SFT Clearing Service fees are designed to be risk-based in that open interest would be charged to the lender and borrower at a rate that is designed to be competitive in the cleared equity SFT marketplace. The proposed fee schedule would also include a per side fee for each new SFT submitted where the SFT has a full-service Member (i.e., a Member acting in a proprietary capacity, a Sponsoring Member, or an Agent Clearing Member) on each side of the trade (excluding any Linked SFTs) to account for the creation of new loans. To evaluate the proposed SFT Clearing Service fees, NSCC considered the expected investment costs to develop the SFT Clearing Service and projected annual costs to run the service (including both technology and non-technology run costs) and analyzed projected revenues based on assumptions of growth rates for the service and the associated timeframes for recovering investment and operating costs.¹³

Proposed Change to Addendum A

To effectuate the proposed SFT Clearing Service fees, Section II of Addendum A concerning Trade Clearance Fees would be updated to include a new subsection for SFT fees, which would include: (i) a fee of \$1.00 per side of each new SFT submitted (excluding any Linked SFT and Sponsored Member Transactions) and (ii) a fee of \$0.14 per million of outstanding SFT notional balance. NSCC would also add a new Section IX to Addendum A stating that a Sponsoring Member shall be liable for fees and charges arising from Sponsored Member Transactions, the data on which it, or its Sponsored Member(s), has submitted to NSCC.

¹³ NSCC has included details of its analysis in confidential Exhibit 3 of filing SR-NSCC-2022-010.

2. Statutory Basis

NSCC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act¹⁴ and Rule 17Ad-22(e)(23)(ii),¹⁵ as promulgated under the Act, for the reasons set forth below.

Section 17A(b)(3)(D) of the Act¹⁶ requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. NSCC believes the proposed fees would be allocated equitably among its full-service Members that transact in SFTs. NSCC would apply a fee of \$1.00 per side for each new SFT submitted where the SFT has a full-service Member (i.e., a Member acting in a proprietary capacity, a Sponsoring Member, or an Agent Clearing Member) on each side of the trade (excluding any Linked SFTs) to account for the creation of new loans. In addition, NSCC would impose a fee of \$0.14 per million of outstanding SFT notional balance in each account maintained by a Member holding SFTs (i.e., a Member's account holding proprietary SFTs, a Sponsoring Member's Sponsored Member Sub-Account(s), and/or an Agent Clearing Member's Agent Clearing Member Customer Omnibus Account(s)) to account for the ongoing operational and risk management activities associated with the maintenance of outstanding SFT positions. NSCC believes that the proposed fee changes are reasonable because they carefully

¹⁴ 15 U.S.C. 78q-1(b)(3)(D).

¹⁵ 17 CFR 240.17Ad-22(e)(23)(ii).

¹⁶ 15 U.S.C. 78q-1(b)(3)(D).

consider the expected investment costs to develop the SFT Clearing Service, the projected annual costs to run the service (including both technology and non-technology run costs), and projected revenues for the service and are intended to achieve an appropriate timeframe for recovering such investment and operating costs.¹⁷ NSCC notes that once the proposed SFT Clearing Services fees are implemented, the SFT Clearing Services fees would be periodically reviewed under NSCC's procedures to control costs and to regularly review pricing levels against costs of operation.¹⁸

Rule 17Ad-22(e)(23)(ii) under the Act¹⁹ requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency. The proposed SFT Clearing Service Fees would be clearly and transparently published in Addendum A of the Rules, which are available on a public website,²⁰ thereby enabling Members to identify the fees associated with participating in the SFT Clearing Service. As such, NSCC believes the proposed rule change is consistent with Rule 17Ad-22(e)(23)(ii) under the Act.²¹

¹⁷ See supra note 13 and associated text.

¹⁸ See supra note 12.

¹⁹ 17 CFR 240.17Ad-22(e)(23)(ii).

²⁰ See supra note 5.

²¹ 17 CFR 240.17Ad-22(e)(23)(ii).

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

NSCC does not believe the proposed rule change would impose any burden, or have any impact, on competition. The proposed fees would apply equally to all Members, Sponsoring Members, and Agent Clearing Members clearing SFTs at NSCC. NSCC believes that the proposed SFT Clearing Service fees would not advantage or disadvantage any particular member or user of the SFT Clearing Service or unfairly inhibit access to the SFT Clearing Service. NSCC notes that members may continue to engage in securities lending on a bilateral basis if they choose.

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

NSCC has conducted outreach to Members to provide them with notice of the proposed fees.

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received by NSCC, 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 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²² and paragraph (f) of Rule 19b-4 thereunder.²³ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSCC-2022-010 on the subject line.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

Paper Comments:

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

All submissions should refer to File Number SR-NSCC-2022-010. 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-2022-010 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.²⁴

J. Matthew DeLesDernier
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).