

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 115		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2023 - * 007 Amendment No. (req. for Amendments *)	
Filing by National Securities Clearing Corporation Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>		Amendment * <input type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Section 19(b)(2) * <input checked="" type="checkbox"/>		Section 19(b)(3)(A) * <input type="checkbox"/>		Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Rule			
		<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) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>			Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div>Modify the Amended and Restated Stock Options and Futures Settlement Agreement and Make Certain Revisions to the NSCC Rules</div>					
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 duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. Date 08/10/2023 (Title *) By [REDACTED] [REDACTED] (Name *) <div>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.</div> <div>Date: 2023.08.10 15:35:33 -04'00'</div>					

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 EDFS website.

Form 19b-4 Information *

Add Remove View

[Narrative - NSCC OCC Accord Amer](#)

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

[Exhibit 1A - NSCC OCC Accord Amer](#)

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 *

Add Remove View

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

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

Add Remove View

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

Add Remove View

[Exhibit 3A - \(Redacted\) - 1 page.docx](#)
[Exhibit 3B \(Redacted\) - 26 pages.docx](#)

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

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

[Exhibit 5A - Proposed Changes to NSC](#)
[Exhibit 5B \(Redacted\) - 21 pages.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

Add Remove View

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 the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”),¹ and Rule 19b-4 thereunder,² National Securities Clearing Corporation (“NSCC”) is filing the proposed rule change with the Securities and Exchange Commission (“SEC” or “Commission”) to (1) modify the Amended and Restated Stock Options and Futures Settlement Agreement dated August 5, 2017 between NSCC and The Options Clearing Corporation (“OCC,” and together with NSCC, the “Clearing Agencies”) (“Existing Accord”)³ and (2) make certain revisions to Rule 18, Procedure III and Addendum K of the NSCC Rules & Procedures (“NSCC Rules”)⁴ in connection with the proposed modifications to the Existing Accord, as described in greater detail below.⁵

The proposed changes would permit OCC to elect to make a cash payment to NSCC following the default of a common clearing participant that would cause NSCC’s central counterparty trade guaranty to attach to certain obligations of that participant, as described in greater detail below.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposal was approved by the Risk Committee of the Board of Directors of NSCC on October 18, 2022.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Existing Accord was previously approved by the Commission. See Securities Exchange Act Release Nos. 81266, 81260 (Jul. 31, 2017) (File Nos. SR-NSCC-2017-007; SR-OCC-2017-013), 82 FR 36484 (Aug. 4, 2017).

⁴ Capitalized terms not defined herein are defined in the NSCC Rules available at www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.

⁵ OCC also has filed a proposed rule change and an advance notice with the Commission in connection with this proposal. See File Nos. SR-OCC-2023-007 and SR-OCC-2023-801 (the “OCC Filing”).

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

(a) Purpose

Executive Summary

NSCC is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, including options that contemplate the physical delivery of equities cleared by NSCC in exchange for cash ("physically settled" options).⁶ OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise/assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations. NSCC and OCC maintain a legal agreement, generally referred to by the parties as the "Accord" agreement, that governs the processing of such physically settled options and futures cleared by OCC that result in transactions in underlying equity securities to be cleared by NSCC ("Existing Accord").

The Existing Accord establishes terms under which NSCC accepts for clearing certain securities transactions that result from the exercise and assignment of relevant options contracts and the maturity of futures contracts that are cleared and settled by OCC.⁷ It also establishes the time when OCC's settlement guaranty in respect of those transactions ends and NSCC's settlement guaranty begins.

The Existing Accord allows for a scenario in which NSCC could choose not to guarantee the settlement of such securities arising out of transactions. Specifically, NSCC is not obligated to guarantee settlement until its member has met its collateral requirements at NSCC. If NSCC chooses not to guarantee settlement, OCC would engage in an alternate method of settlement outside of NSCC. This scenario presents two primary problems. First, the cash required for OCC and its Clearing Members in certain market conditions to facilitate settlement outside of NSCC could be significantly more than the amount required if NSCC were to guarantee the relevant transactions. This is because settlement of the transactions in the underlying equity securities outside of NSCC would mean that they would no longer receive the benefit of netting through the facilities of NSCC. In such a scenario, the additional collateral required from Clearing Members to support OCC's continuing settlement guarantee would also have to be sufficiently

⁶ The term "physically-settled" as used throughout the OCC Rulebook refers to cleared contracts that settle into their underlying interest (*i.e.*, options or futures contracts that are not cash-settled). When a contract settles into its underlying interest, shares of stock are sent, *i.e.*, delivered, to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option, and maturity in the case of a future.

⁷ Under the Existing Accord, such options and futures are defined as "E&A/Delivery Transactions," which refers to "Exercise & Assignment Delivery Transactions."

liquid to properly manage the risks associated with those transactions being due on the second business day following the option exercise, or the relevant futures contract maturity date.

Based on an analysis of scenarios using historical data where it was assumed that OCC could not settle transactions through the facilities of NSCC, the worst-case outcome resulted in extreme liquidity demands – of over \$300 billion – for OCC to effect settlement via an alternative method, *e.g.*, by way of gross broker-to-broker settlement, as discussed in more detail below. OCC Clearing Members, by way of their contributions to the OCC Clearing Fund, would bear the brunt of this demand. Furthermore, there is no guarantee that OCC Clearing Members could fund the entire amount of any similar real-life scenarios. By contrast, projected GSPs identified during the study ranged from approximately \$419 million to over \$6 billion, also as discussed in more detail below.

The second primary problem relates to the significant operational complexities if settlement occurs outside of NSCC. More specifically, netting through NSCC reduces the volume and value of settlement obligations. For example, in 2022 it is estimated that netting through NSCC’s continuous net settlement (“CNS”) accounting system⁸ reduced the value of CNS settlement obligations by approximately 98% or \$510 trillion from \$519 trillion to \$9 trillion. If settlement occurred outside of NSCC, on a broker-to-broker basis between OCC Clearing Members, for example, shares would not be netted, and Clearing Members would have to coordinate directly with each other to settle the relevant transactions. The operational complexities and uncertainty associated with alternate means of settlement would impact every market participant involved in a settlement of OCC-related transactions.

To address these problems, the Clearing Agencies are proposing to amend and restate the Existing Accord and make related changes to their respective rules that would allow OCC to elect to make a cash payment to NSCC following the default of a Common Member⁹ that would cause NSCC to guarantee settlement of that Common Member’s transactions and, therefore, cause those transactions to be settled through processing by NSCC. As part of this proposal, OCC also would enhance its daily liquidity stress testing processes and procedures to account for the possibility of OCC making such a payment to NSCC in the event of a Common Member default. By making these enhancements to its stress testing, OCC could include the liquid resources necessary to make the payment in its resource planning. The Clearing Agencies believe that by NSCC accepting such a payment from OCC the operational efficiencies and reduced costs related to the settlement of transactions through NSCC would limit market disruption

⁸ See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation) of the NSCC Rules, supra note 4.

⁹ A firm that is both an OCC Clearing Member and an NSCC Member or is an OCC Clearing Member that has designated an NSCC Member to act on its behalf is referred to herein as a “Common Member”. The term “Clearing Member” as used herein has the meaning provided in OCC’s By-Laws. See OCC’s By-laws & Rules, available at www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules. The term “Member” as used herein has the meaning provided in NSCC’s Rules. See supra note 4.

following a Common Member default because settlement through NSCC following such a default would be less operationally complex and would be expected to require less liquidity and other collateral from market participants than the processes available to OCC for closing out positions. Additionally, proposed enhancements by OCC to its liquidity stress testing would add assurances that OCC could make such a payment in the event of a Common Member default. The Clearing Agencies believe that their respective clearing members and all other participants in the markets for which OCC provides clearance and settlement would benefit from OCC's ability to choose to make a cash payment to effect settlement through the facilities of NSCC. This change would provide more certainty around certain default scenarios and would blunt the financial and operational burdens market participants could experience in the case of most clearing member defaults.¹⁰

Background

OCC acts as a central counterparty clearing agency for U.S.-listed options and futures on a number of underlying financial assets including common stocks, currencies and stock indices. In connection with these services, OCC provides the OCC Guaranty pursuant to its By-Laws and Rules. NSCC acts as a central counterparty clearing agency for certain equity securities, corporate and municipal debt, exchange traded funds and unit investment trusts that are eligible for its services. Eligible trading activity may be processed through NSCC's CNS system or Balance Order Account system,¹¹ where all eligible compared and recorded transactions for a particular settlement date are netted by issue into one net long (buy), net short (sell) or flat position. As a result, for each day with activity, each Member has a single deliver or receive obligation for each issue in which it has activity. In connection with these services, NSCC also provides the NSCC Guaranty pursuant to Addendum K of the NSCC Rules.

OCC's Rules provide that delivery of, and payment for, securities underlying certain exercised stock options and matured single stock futures that are physically settled are generally effected through the facilities of NSCC and are not settled through OCC's facilities.¹² OCC and NSCC executed the Existing Accord to facilitate, via NSCC's systems, the physical settlement of securities arising out of options and futures cleared by OCC. OCC Clearing Members that clear and settle physically settled options and futures transactions through OCC also are required under OCC's Rules¹³ to be Members of NSCC or to have appointed or nominated a Member of NSCC to act on its behalf. As noted above, these firms are referred to as "Common Members" in the Existing Accord.

¹⁰ OCC filed its analysis of the financial impact of alternate means of settlement as an exhibit to the OCC Filing.

¹¹ See Rule 8 (Balance Order and Foreign Security Systems) and Procedure V (Balance Order Accounting Operation) of the NSCC Rules, supra note 4.

¹² See Chapter IX of OCC's Rules (Delivery of Underlying Securities and Payment), supra note 9.

¹³ See OCC Rule 901, supra note 9.

Summary of the Existing Accord

The Existing Accord governs the transfer between OCC and NSCC of responsibility for settlement obligations that involve a delivery and receipt of stock in the settlement of physically settled options and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC (“E&A/Delivery Transactions”). It also establishes the time when OCC’s settlement guarantee (the “OCC Guaranty”) ends and NSCC’s settlement guarantee (the “NSCC Guaranty”)¹⁴ begins with respect to E&A/Delivery Transactions. However, in the case of a Common Member default¹⁵ NSCC can reject these settlement obligations, in which case the settlement guaranty would not transfer from OCC to NSCC, and OCC would not have a right to settle the transactions through the facilities of NSCC. Instead, OCC would have to engage in alternative methods of settlement that have the potential to create significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members.¹⁶ More specifically, this could involve broker-to-broker settlement between OCC Clearing Members.¹⁷ This settlement method is operationally complex because it requires bilateral coordination directly between numerous Clearing Members rather than relying on NSCC to facilitate multilateral netting to settle the relevant settlement obligations. As described above, it also potentially could result in significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members because the transactions would not be netted through the facilities of NSCC. Alternatively, where NSCC accepts the E&A/Delivery Transactions from OCC, the OCC Guaranty ends and the NSCC Guaranty takes effect. The transactions are then netted through NSCC’s systems, which allows settlement obligations for the same settlement date to be netted into a single deliver or receive obligation.

¹⁴ See Addendum K and Procedure III of the NSCC Rules, *supra* note 4.

¹⁵ A Common Member that has been suspended by OCC or for which NSCC has ceased to act is referred to as a “Mutually Suspended Member.”

¹⁶ For example, OCC evaluated certain Clearing Member default scenarios in which OCC assumed that NSCC would not accept the settlement obligations under the Existing Accord, including the default of a large Clearing Member coinciding with a monthly options expiration. OCC has estimated that in such a Clearing Member default scenario, the aggregate liquidity burden on OCC in connection with obligations having to be settled on a gross, broker-to-broker basis could reach a significantly high level. For example, in January 2022, the largest gross broker-to-broker settlement amount in the case of a larger Clearing Member default would have resulted in liquidity needs of approximately \$384,635,833,942. OCC provided the data and analysis as an exhibit to the OCC Filing.

¹⁷ In broker-to-broker settlement, Clearing Member parties are responsible for coordinating settlement – delivery and payment – among themselves on a transaction-by-transaction basis. Once transactions settle, the parties also have an obligation to affirmatively notify OCC so that OCC can close out the transactions. If either one of or both of the parties do not notify OCC, the transaction would remain open on OCC’s books indefinitely until the time both parties have provided notice of settlement to OCC.

This netting reduces the costs associated with securities transfers by reducing the number of securities movements required for settlement and further reduces operational and market risk. The benefits of such netting by NSCC may be significant with respect to the large volumes of E&A/Delivery Transactions processed during monthly options expiry periods.

Pursuant to the Existing Accord, on each trading day NSCC delivers to OCC a file that identifies the securities, including stocks, exchange-traded funds and exchange-traded notes, that are eligible (1) to settle through NSCC and (2) to be delivered in settlement of (i) exercises and assignments of stock options cleared and settled by OCC or (ii) delivery obligations from maturing stock futures cleared and settled by OCC. OCC, in turn, delivers to NSCC a file identifying securities to be delivered, or received, for physical settlement in connection with OCC transactions.¹⁸

After NSCC receives the list of eligible transactions from OCC and NSCC has received all required deposits to the NSCC Clearing Fund from all Common Members taking into consideration amounts required to physically settle the OCC transactions, the OCC Guaranty would end and the NSCC Guaranty would begin with respect to physical settlement of the eligible OCC-related transactions.¹⁹ At this point, NSCC is solely responsible for settling the transactions.²⁰

Each day, NSCC is required to promptly notify OCC at the time the NSCC Guaranty takes effect. If NSCC rejects OCC's transactions due to an improper submission²¹ or if NSCC

¹⁸ Each day that both OCC and NSCC are open for accepting trades for clearing is referred to as an "Activity Date" in the Existing Accord. Securities eligible for settlement at NSCC are referred to collectively as "Eligible Securities" in the Existing Accord. Eligible securities are settled at NSCC through NSCC's CNS Accounting Operation or NSCC's Balance Order Accounting Operation.

¹⁹ The term "NSCC Clearing Fund" as used herein has the same meaning as the term "Clearing Fund" as provided in the NSCC Rules. Procedure XV of the NSCC Rules provides that all NSCC Clearing Fund requirements and other deposits must be made within one hour of demand, unless NSCC determines otherwise, supra note 4.

²⁰ This is referred to in the Existing Accord as the "Guaranty Substitution Time," and the process of the substitution of the NSCC Guaranty for the OCC Guaranty with respect to E&A/Delivery Transactions is referred to as "Guaranty Substitution."

²¹ Guaranty Substitution by NSCC (discussed further below) does not occur with respect to an E&A/Delivery Transaction that is not submitted to NSCC in the proper format or that involves a security that is not identified as an Eligible Security on the then-current NSCC Eligibility Master File.

“ceases to act” for a Common Member,²² NSCC’s Guaranty would not take effect for the affected transactions pursuant to the NSCC Rules.

NSCC is required to promptly notify OCC if it ceases to act for a Common Member. Upon receiving such a notice, OCC would not continue to submit to NSCC any further unsettled transactions that involve such Common Member, unless authorized representatives of both OCC and NSCC otherwise consent. OCC would, however, deliver to NSCC a list of all transactions that have already been submitted to NSCC and that involve such Common Member. The NSCC Guaranty ordinarily would not take effect with respect to transactions for a Common Member for which NSCC has ceased to act, unless both Clearing Agencies agree otherwise. As such, NSCC does not have any existing contractual obligation to guarantee such Common Member’s transactions. To the extent the NSCC Guaranty does not take effect, OCC’s Guaranty would continue to apply, and, as described above, OCC would remain responsible for effecting the settlement of such Common Member’s transactions pursuant to OCC’s By-Laws and Rules.

As noted above, the Existing Accord does provide that the Clearing Agencies may agree to permit additional transactions for a Common Member default (“Defaulted NSCC Member Transactions”) to be processed by NSCC while subject to the NSCC Guaranty. This optional feature, however, creates uncertainty for the Clearing Agencies and market participants about how Defaulted NSCC Member Transactions may be processed following a Common Member default and also does not provide NSCC with the ability to collect collateral from OCC that it may need to close out these additional transactions. While the optional feature would remain in the agreement as part of this proposal, the proposed changes to the Existing Accord, as described below, could significantly reduce the likelihood that it would be utilized.

Proposed Changes to the Existing Accord

The proposed changes to the Existing Accord would permit OCC to make a cash payment, referred to as the “Guaranty Substitution Payment” or “GSP,” to NSCC. This cash payment could occur on either or both of the day that the Common Clearing Member becomes a Mutually Suspended Member and on the next business day. Upon NSCC’s receipt of the Guaranty Substitution Payment from OCC, the NSCC Guaranty would take effect for the Common Member’s transactions, and they would be accepted by NSCC for clearance and

²² Under NSCC’s Rules, a default would generally be referred to as a “cease to act” and could encompass a number of circumstances, such as an NSCC Member’s failure to make a Required Fund Deposit in a timely fashion. See NSCC Rule 46 (Restrictions on Access to Services), supra note 4. An NSCC Member for which it has ceased to act is referred to in the Existing Accord as a “Defaulting NSCC Member.” Transactions associated with a Defaulting NSCC Member are referred to as “Defaulted NSCC Member Transactions” in the Existing Accord.

settlement.²³ OCC could use all Clearing Member contributions to the OCC Clearing Fund²⁴ and certain Margin Assets²⁵ of a defaulted Clearing Member to pay the GSP, as described in more detail below.

NSCC would calculate the Guaranty Substitution Payment as the sum of the Mutually Suspended Member's unpaid required deposit to the NSCC Clearing Fund ("Required Fund Deposit")²⁶ and the unpaid Supplemental Liquidity Deposit²⁷ obligation that is attributable to E&A/Delivery Transactions. The proposed changes to the Existing Accord define how NSCC would calculate the Guaranty Substitution Payment.

More specifically, NSCC would first determine how much of the member's unpaid Clearing Fund requirement would be included in the GSP. NSCC would look at the day-over-day change in gross market value of the Mutually Suspended Member's positions as well as day-over-day change in the member's NSCC Clearing Fund requirements. Based on such changes, NSCC would identify how much of the change in the Clearing Fund requirement was attributable to E&A/Delivery Transactions coming from OCC. If 100 percent of the day-over-day change in the NSCC Clearing Fund requirement is attributable to activity coming from OCC, then the GSP would include 100 percent of the member's NSCC Clearing Fund requirement. If less than 100 percent of the change is attributable to activity coming from OCC, then the GSP would include that percent of the member's unpaid NSCC Clearing Fund requirement attributable to activity coming from OCC. NSCC would then determine the portion of the member's unpaid SLD obligation that is attributable to E&A/Delivery Transactions. As noted above, the GSP would be the sum of these two amounts. A member's NSCC Clearing Fund requirement and SLD obligation at NSCC are designed to address the credit and liquidity risks that a member poses to NSCC. The GSP calculation is intended to assess how much of a member's obligations arise out of activity coming from OCC so that the amount paid by OCC is commensurate with the risk to NSCC of guarantying such activity.

²³ Acceptance of such transactions by NSCC would be subject to NSCC's standard validation criteria for incoming trades. See NSCC Rule 7, supra note 4.

²⁴ The term "OCC Clearing Fund" as used herein has the same meaning as the term "Clearing Fund" in OCC's By-Laws, supra note 9.

²⁵ The term "Margin Assets" as used herein has the same meaning as provided in OCC's By-Laws, supra note 9.

²⁶ The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules. See supra note 4.

²⁷ Under the NSCC Rules, NSCC collects additional cash deposits from those Members who would generate the largest settlement debits in stressed market conditions, referred to as "Supplemental Liquidity Deposits" or "SLD." See Rule 4A of the NSCC Rules, supra note 4.

To permit OCC to anticipate the potential resources it would need to pay the GSP for a Mutually Suspended Member, each business day NSCC would provide OCC with (1) Required Fund Deposit and Supplemental Liquidity Deposit obligations, as calculated pursuant to the NSCC Rules, and (2) the gross market value of the E&A/Delivery Transactions and the gross market value of total Net Unsettled Positions (as such term is defined in the NSCC Rules). On options expiry days that fall on a Friday, NSCC would also provide OCC with information regarding liquidity needs and resources, and any intraday SLD requirements of Common Members. Such information would be delivered pursuant to the ongoing information sharing obligations under the Existing Accord (as proposed to be amended) and the Service Level Agreement (“SLA”) to which both NSCC and OCC are a party pursuant to Section 2 of the Existing Accord.²⁸ The SLA addresses specifics regarding the time, form and manner of various required notifications and actions described in the Accord and also includes information applicable under the Accord.

NSCC and OCC believe the proposed calculation of the Required Fund Deposit portion of the GSP is appropriate because it is designed to provide a reasonable proxy for the impact of the Mutually Suspended Member’s E&A/Delivery Transactions on its Required Fund Deposit. While impact study data did show that the proposed calculation could result in a GSP that overestimates or underestimates the Required Fund Deposit attributable to the Mutually Suspended Member’s E&A/Delivery Transactions,²⁹ current technology constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member.³⁰

Implementing the ability for OCC to make the GSP and cause the E&A/Delivery Transactions to be cleared and settled through NSCC would promote the ability of OCC and NSCC to be efficient and effective in meeting the requirements of the markets they serve. This is because data demonstrates that the expected size of the GSP would be smaller than the amount of cash that would otherwise be needed by OCC and its Clearing Members to facilitate settlement outside of NSCC. More specifically, based on a historical study of alternate means of settlement

²⁸ The revised SLA has been filed as an exhibit to this filing.

²⁹ The impact study was conducted at the Commission’s request to cover a three-day period and reviewed the ten Common Members with the largest Required Fund Deposits attributable to the Mutually Suspended Member’s E&A/Delivery Transactions. Over the 30 instances in the study, approximately 15 instances resulted in an underestimate of the Required Fund Deposit by an average of approximately \$112,900,926; four instances where the proxy calculation was the same as the Required Fund Deposit; and eleven instances of an overestimate of the Required Fund Deposit by an average of approximately \$59,654,583. NSCC filed additional detail related to the referenced study as an exhibit to this filing.

³⁰ OCC and NSCC have agreed that performing the necessary technology build at this time would delay the implementation of this proposal. Therefore, NSCC would consider incorporating those technology updates into future revisions to the Accord, for example in connection with a move to a shorter settlement cycle in the U.S. equities markets.

available to OCC from September 2021 through September 2022, in the event that NSCC did not accept E&A/Delivery Transactions, the worst-case scenario peak liquidity need OCC identified was \$384,635,833,942 for settlement to occur on a gross broker-to-broker basis. OCC estimates that the corresponding GSP in this scenario would have been \$863,619,056. OCC also analyzed several other large liquidity demand amounts that were identified during the study if OCC effected settlement on a gross broker-to-broker basis.³¹ These liquidity demand amounts and the largest liquidity demand amount OCC observed of \$384,635,833,942 substantially exceed the amount of liquid resources currently available to OCC.³² By contrast, projected GSPs identified during the study ranged from \$419,297,734 to \$6,281,228,428. For each of these projected GSP amounts, OCC observed that the Margin Assets and OCC Clearing Fund contributions that would have been required of Clearing Members in these scenarios would have been sufficient to satisfy the amount of the projected GSPs.

To help address the current technology constraint that prohibits NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member, proposed Section 6(b)(i) of the Existing Accord and related Section 7(d) of the SLA would provide that, with respect to a Mutually Suspended Member, either NSCC or OCC may require that the Required Fund Deposit portion of the GSP be re-calculated by calculating the Required Fund Deposit for the Mutually Suspended Member both before and after the delivery of the E&A/Delivery Transactions and utilize the precise amount that is attributable to that activity in the final GSP. If such a recalculation is required, the result would replace the Required Fund Deposit component of the GSP that was initially calculated. The SLD component of the GSP would be unchanged by such recalculation.

As the above demonstrates, the GSP is intended to address the significant collateral and liquidity requirements that could be required of OCC Clearing Members in the event of a Common Member default.

Allowing OCC to make a GSP payment also is intended to allow for settlement processing to take place through the facilities of NSCC to retain operational efficiencies associated with the settlement process. Alternative settlement means such as broker-to broker settlement add operational burdens because transactions would need to be settled individually on one-off bases. In contrast, NSCC's netting reduces the volume and value of settlement obligations that would need to be closed out in the market.³³ Because the clearance and settlement of obligations through NSCC's facilities following a Common Member default,

³¹ OCC filed additional detail related to the referenced study as an exhibit to the OCC Filing.

³² As of Mar. 31, 2023, OCC held approximately \$10.37 billion in qualifying liquid resources. See OCC Quantitative Disclosure, Jan. – Mar. 2023, [available at](http://www.theocc.com/risk-management/pfmi-disclosures) www.theocc.com/risk-management/pfmi-disclosures.

³³ CNS reduces the value of obligations that require financial settlement by approximately 98 percent, where, for example, approximately \$519 trillion in trades could be netted down to approximately \$9 trillion in net settlements.

including netting of E&A/Delivery Transactions with a Common Member's positions at NSCC would avoid these potentially significant operational burdens for OCC and its Clearing Members, OCC and NSCC believe that the proposed changes would limit market disruption relating to a Common Member default. NSCC netting significantly reduces the total number of obligations that require the exchange of money for settlement. Allowing more activity to be processed through NSCC's netting systems would minimize risk associated with the close out of those transactions following the default of a Common Member.

Amending the Existing Accord to define the terms and conditions under which Guaranty Substitution may occur, at OCC's election, with respect to Defaulted NSCC Member Transactions *after* a Common Member becomes a Mutually Suspended Member would also provide more certainty to both the Clearing Agencies and market participants generally about how a Mutually Suspended Member's Defaulted NSCC Member Transactions may be processed.

NSCC and OCC have agreed it is appropriate to limit the availability of the proposed provision to the day of the Common Member default and the next business day because, based on historical cease to act events and simulations of cease to act events involving Common Members, most activity of a Mutually Suspended Member is closed out on those days.³⁴ Furthermore, the benefits of netting through NSCC's systems would be reduced for any activity submitted to NSCC after that time.

To implement these proposed changes to the Existing Accord, OCC and NSCC propose to make the following changes.

Section 1 – Definitions

First, new definitions would be added, and existing definitions would be amended in Section 1, which is the Definitions section.

The new defined terms would be as follows.

- The term “Close Out Transaction” would be defined to mean “the liquidation, termination or acceleration of one or more exercised or matured Stock Options³⁵ or Stock Futures³⁶ contracts, securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, master netting agreements or similar agreements of a Mutually Suspended Member pursuant to OCC Rules 1101 through 1111 and/or NSCC Rule 18.” This proposed definition would make it clear that the payment of the Guaranty Substitution Payment and NSCC's

³⁴ OCC filed data regarding simulated events as an exhibit to the OCC Filing.

³⁵ The term “Stock Options” is defined in the Existing Accord within the definition of “Eligible Securities” and refers to options issued by OCC.

³⁶ The term “Stock Futures” is defined in the Existing Accord within the definition of “Eligible Securities,” described below, and refers to stock futures contracts cleared by OCC.

subsequent acceptance of Defaulted NSCC Member Transactions for clearance and settlement are intended to fall within the “safe harbors” provided in the Bankruptcy Code,³⁷ the Securities Investor Protection Act,³⁸ and other similar laws.

- The term “Guaranty Substitution Payment” would be defined to mean “an amount calculated by NSCC in accordance with the calculations set forth in Appendix A [to the Existing Accord (as proposed to be amended)], to include two components: (i) a portion of the Mutually Suspended Member’s Required Fund Deposit deficit to NSCC at the time of the cease to act and (ii) a portion of the Mutually Suspended Member’s unpaid Supplemental Liquidity Deposit obligation at the time of the cease to act.”
- The term “Mutually Suspended Member” would mean “any OCC Participating Member³⁹ that has been suspended by OCC that is also an NSCC Participating Member⁴⁰ for which NSCC has ceased to act.”
- The term “Required Fund Deposit” would have the meaning “provided in Rule 4 of NSCC’s Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.”
- The term “Supplemental Liquidity Deposit” would have the meaning “provided in Rule 4A of NSCC’s Rules and Procedures (or any replacement or substitute rule),

³⁷ 11 U.S.C. § 101 et seq., including §§362(b)(6), (7), (17), (25) and (27) (exceptions to the automatic stay), §§546(e) – (g) and (j) (limitations on avoiding powers), and §§555 – 556 and 559 – 562 (contractual right to liquidate, terminate or accelerate certain contracts).

³⁸ 15 U.S.C. §§ 78aaa – III, including §78eee(b)(2)(C) (exceptions to the stay).

³⁹ The term “OCC Participating Member” is defined in the Existing Accord to mean “(i) a Common Member; (ii) an OCC Clearing Member that is an ‘Appointing Clearing Member’ (as defined in Article I of OCC’s By-Laws) and has appointed an Appointed Clearing Member that is an NSCC Member to effect settlement of E&A/Delivery Transactions through NSCC on the Appointing Clearing Member’s behalf; (iii) an OCC Clearing Member that is an Appointed Clearing Member; or (iv) a Canadian Clearing Member.” No changes are proposed to this definition.

⁴⁰ The term “NSCC Participating Member” is defined in the Existing Accord to mean “(i) a Common Member; (ii) an NSCC Member that is an ‘Appointed Clearing Member’ (as defined in Article I of OCC’s By-Laws); or (iii) [The Canadian Depository for Securities Limited, or “CDS”]. For the avoidance of doubt, the Clearing Agencies agree that CDS is an NSCC Member for purposes of this Agreement.” No changes are proposed to this definition.

the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.”

The defined terms that would be amended in Section 1 of the Existing Accord are as follows.

- The definition for the term “E&A/Delivery Transaction” generally contemplates a transaction that involves a delivery and receipt of stock in the settlement of physically settled options and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC. The definition would be amended to make clear that it would apply in respect of a “Close Out Transaction” of a “Mutually Suspended Member” as those terms are proposed to be defined (described above).
- The definition for the term “Eligible Securities” generally contemplates the securities that are eligible to be used for physical settlement under the Existing Accord. The term would be modified to clarify that this may include, for example, equities, exchange-traded funds and exchange-traded notes that are underlying securities for options issued by OCC.

Section 6 – Default by an NSCC Participating Member or OCC Participating Member

Section 6 of the Existing Accord provides that NSCC is required to provide certain notice to OCC in circumstances in which NSCC has ceased to act for a Common Member. Currently, Section 6(A)(ii) of the Existing Accord also requires NSCC to notify OCC if a Common Member has failed to satisfy its Clearing Fund obligations to NSCC, but for which NSCC has not yet ceased to act. In practice, this provision would trigger a number of obligations (described below) when a Common Member fails to satisfy its NSCC Clearing Fund obligations for any reason, including those due to an operational delay. Therefore, OCC and NSCC are proposing to remove the notification requirement under Section 6(A)(ii) from the Existing Accord. Under Section 7(d) of the Existing Accord, NSCC and OCC are required to provide each other with general surveillance information regarding Common Members, which includes information regarding any Common Member that is considered by the other party to be in distress. Therefore, if a Common Member has failed to satisfy its NSCC Clearing Fund obligations and NSCC believes this failure is due to, for example, financial distress and not, for example, due to a known operational delay, and NSCC has not yet ceased to act for that Common Member, such notification to OCC would still occur but would be done pursuant to Section 7(d) of the Existing Accord (as proposed to be amended), and not Section 6(A)(ii). Notifications under Section 6 of the Existing Accord (as proposed to be amended) would be limited to instances when NSCC has actually ceased to act for a Common Member pursuant to the NSCC Rules.⁴¹

Following notice by NSCC that it has ceased to act for a Common Member, OCC is obligated in turn to deliver to NSCC a list of all E&A/Delivery Transactions (excluding certain

⁴¹ See Rule 46 (Restrictions on Access to Services) of the NSCC Rules, supra note 4.

transactions for which Guaranty Substitution does not occur) involving the Common Member.⁴² This provision would be amended to clarify that it applies in respect of such E&A/Delivery Transactions for the Common Member for which the NSCC Guaranty has not yet attached – meaning that Guaranty Substitution has not yet occurred.

As described above in the summary of the Existing Accord, where NSCC has ceased to act for a Common Member, the Existing Accord refers to the Common Member as the Defaulting NSCC Member and also refers to the relevant E&A/Delivery Transactions in connection with that Defaulting NSCC Member for which a Guaranty Substitution has not yet occurred as Defaulted NSCC Member Transactions.

If the Defaulting NSCC Member is also suspended by OCC, it would be covered by the proposed definition that is described above for a Mutually Suspended Member. For such a Mutually Suspended Member, the proposed changes in Section 6(b) would provide that NSCC, by a time agreed upon by the parties, would provide OCC with the amount of the Guaranty Substitution Payment as calculated by NSCC and related documentation regarding the calculation. The Guaranty Substitution Payment would be calculated pursuant to NSCC's Rules as that portion of the unmet Required Fund Deposit⁴³ and Supplemental Liquidity Deposit⁴⁴ obligations of the Mutually Suspended Member attributable to the Defaulted NSCC Member Transactions. By a time agreed upon by the parties,⁴⁵ OCC would then be required to either notify NSCC of its intent to make the full amount of the Guaranty Substitution Payment to NSCC or notify NSCC that it would not make the Guaranty Substitution Payment. If OCC makes the full amount of the Guaranty Substitution Payment, NSCC's guaranty would take effect at the time of NSCC's receipt of that payment and the OCC Guaranty would end.

The proposed changes would further provide that if OCC does not suspend the Common Member (such that the Common Member would therefore not meet the proposed definition of a Mutually Suspended Member) or if OCC elects to not make the full amount of the Guaranty Substitution Payment to NSCC, then all of the Defaulted NSCC Member Transactions would be exited from NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation, as applicable, and Guaranty Substitution would not occur in respect thereof.

⁴² The section of the Existing Accord that addresses circumstances in which NSCC ceases to act and/or an NSCC Member defaults is currently part of Section 6(a). It would be re-designated as Section 6(b) for organizational purposes.

⁴³ The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules, see supra note 4.

⁴⁴ The Supplemental Liquidity Deposit is calculated pursuant to Rule 4A (Supplemental Liquidity Deposits) of the NSCC Rules, see supra note 4.

⁴⁵ The time by which OCC would be required to notify NSCC of its intent would be defined in the Service Level Agreement. As of the time of this filing, the parties intend to set that time as one hour after OCC's receipt of the calculated Guaranty Substitution Payment from NSCC.

Therefore, NSCC would continue to have no obligation to guarantee or settle the Defaulted NSCC Member Transactions, and the OCC Guaranty would continue to apply to them pursuant to OCC's By-Laws and Rules.⁴⁶

Proposed changes to the Existing Accord would also address the application of any Guaranty Substitution Payment by NSCC. Specifically, new Section 6(d) would provide that any Guaranty Substitution Payment made by OCC may be used by NSCC to satisfy any liability or obligation of the Mutually Suspended Clearing Member to NSCC on account of transactions involving the Mutually Suspended Clearing Member for which the NSCC Guaranty applies and to the extent that any amount of assets otherwise held by NSCC for the account of the Mutually Suspended Member (including any Required Fund Deposit or Supplemental Liquidity Deposit) are insufficient to satisfy its obligations related to transactions for which the NSCC Guaranty applies. Proposed changes to Section 6(d) would further provide for the return to OCC of any unused portion of the GSP. With regard to the portion of the Guaranty Substitution Payment that corresponds to a member's Supplemental Liquidity Deposit obligation, NSCC must return any unused amount to OCC within fourteen (14) days following the conclusion of NSCC's settlement, close-out and/or liquidation. With regard to the portion of the Guaranty Substitution Payment that corresponds to a Required Fund Deposit, NSCC must return any unused amount to OCC under terms agreed to by the parties.⁴⁷

Other Proposed Changes

Certain other technical changes are also proposed to the Existing Accord to conform it to the proposed changes described above. For example, the preamble and the "whereas" clauses in the Preliminary Statement would be amended to clarify that the agreement is an amended and restated agreement and to summarize that the agreement would be modified to contemplate the Guaranty Substitution Payment structure. Section 1(c), which addresses the terms in the Existing Accord that are defined by reference to NSCC's Rules and Procedures and OCC's By-Laws and Rules would be modified to state that such terms would have the meaning then in effect at the time of any transaction or obligation that is covered by the agreement rather than stating that such terms have the meaning given to them as of the effective date of the agreement. This change is proposed to help ensure that the meaning of such terms in the agreement would not become inconsistent with the meaning in the NSCC Rules and/or OCC By-Laws and Rules, as they may be modified through proposed rule changes with the Commission.

Technical changes would be made to Sections 3(d) and (e) of the Existing Accord to provide that those provisions would not apply in the event new Section 6(b) described above, is triggered. Section 3(d) generally provides that OCC would no longer submit E&A/Delivery

⁴⁶ Under the current and proposed terms of the Existing Accord, NSCC would be permitted to voluntarily guaranty and settle the Defaulted NSCC Member Transactions.

⁴⁷ Such amounts would be returned to OCC as appropriate and in accordance with a Netting Contract and Limited Cross-Guaranty, by and among The Depository Trust Company, Fixed Income Clearing Corporation, NSCC and OCC, dated as of Jan. 1, 2003, as amended.

Transactions to NSCC involving a suspended OCC Participating Member. Similarly, Section 3(e) generally provides that OCC would no longer submit E&A/Delivery Transactions to NSCC involving an NSCC Participating Member for which NSCC has ceased to act. A proposed change would also be made to Section 5 of the Existing Accord to modify a reference to Section 5 of Article VI of OCC's By-Laws to instead provide that the updated cross-reference should be to Chapter IV of OCC's Rules.

Section 5 would also be amended to clarify that Guaranty Substitution occurs when NSCC has received both the Required Fund Deposit and Supplemental Liquidity Deposit, as calculated by NSCC in its sole discretion, from Common Members. The addition of the collection of the Supplemental Liquidity Deposit to the definition of the Guaranty Substitution Time in this Section 5 would reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment (as described above) and would make this definition consistent with that agreement.

In Section 7 of the Existing Accord, proposed changes would be made to provide that NSCC would provide to OCC information regarding a Common Member's Required Fund Deposit and Supplemental Liquidity Deposit obligations, to include the Supplemental Liquidity Deposit obligation in this notice requirement, and additionally that NSCC would provide OCC with information regarding the potential Guaranty Substitution Payment for the Common Member. On an options expiration date that is a Friday, NSCC would, by close of business on that day, also provide to OCC information regarding the intra-day liquidity requirement, intra-day liquidity resources and intra-day calls for a Common Member that is subject to a Supplemental Liquidity Deposit at NSCC.

Finally, Section 14 of the Existing Accord would be modernized to provide that notices between the parties would be provided by e-mail rather than by hand, overnight delivery service or first-class mail.

Proposed Changes to NSCC Rules

In connection with the proposed changes to the Existing Accord, NSCC is also proposing changes to its Rules, described below.

First, NSCC would amend Rule 18 (Procedures for When the Corporation Ceases to Act), which describes the actions NSCC would take with respect to the transactions of a Member after NSCC has ceased to act for that Member.⁴⁸ The proposed changes would include a new Section 9(a) to specify that following a Member default, NSCC may continue to act and provide the NSCC Guaranty pursuant to a "Close-Out Agreement" such as the Existing Accord (as it is proposed to be amended);⁴⁹ a new Section 9(b) to specify that any transactions undertaken pursuant to a Close-Out Agreement would be treated as having been received, provided or undertaken for the account of the Member for which NSCC has ceased to act, but that any

⁴⁸ See supra note 4.

⁴⁹ The Existing Accord is currently the only agreement that would be considered a "Close-Out Agreement" under this new Section 9(b).

deposit, payment, financial assurance or other accommodation provided to NSCC pursuant to a Close-Out Agreement shall be returned or released as provided for in the agreement; and a new Section 9(c), to provide that NSCC shall have a lien upon, and may apply, any property of the defaulting Member in satisfaction of any obligation, liability or loss that relates to a transaction undertaken or service provided pursuant to a Close-Out Agreement.

NSCC would also propose clarifications to Sections 4, 6(b)(iii)(B) and 8 to use more precise references to the legal entity described in those sections of this Rule.

Second, NSCC would amend Section B of Procedure III and Addendum K of the NSCC Rules⁵⁰ to provide that the NSCC Guaranty would not attach to Defaulted NSCC Member Transactions except as provided for in the Existing Accord (as it is proposed to be amended), and that the NSCC Guaranty attaches, with respect to obligations arising from the exercise or assignment of OCC options settled at NSCC or stock futures contracts cleared by OCC, as provided for in the Existing Accord (as it is proposed to be amended) or other arrangement with OCC. Finally, the proposed changes to Procedure III would clarify that Guaranty Substitution occurs when NSCC has received both the Required Fund Deposit and Supplemental Liquidity Deposit, consistent with the proposed revisions to Section 5 of the Current Accord, described above. As noted above, the proposal to include the collection of the Supplemental Liquidity Deposit in connection with the Guaranty Substitution reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment.

Collectively, these proposed changes would establish and clarify the rights of both NSCC and a Member for which NSCC has ceased to act with respect to property held by NSCC and the operation and applicability of any Close-Out Agreement, and would make it clear that any payments received pursuant to a Close-Out Agreement and NSCC's acceptance of a Mutually Suspended Member's transactions for clearance and settlement pursuant to a Close-Out Agreement are intended to fall within the Bankruptcy Code and Securities Investor Protection Act "safe harbors."

(b) Statutory Basis

NSCC believes the proposed changes to the Existing Accord and its Rules are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes the proposed change is consistent with Section 17A(b)(3)(F) of the Act⁵¹ and Rules 17Ad-22(e)(7) and (20), each promulgated under the Act,⁵² for the reasons described below.

⁵⁰ See id.

⁵¹ 15 U.S.C. 78q-1(b)(3)(F).

⁵² 17 CFR 240.17Ad-22(e)(7), (20).

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed, in general, to protect investors and the public interest.⁵³ As described above, NSCC believes that providing OCC with the ability to make a Guaranty Substitution Payment to it with respect to any unmet obligations of a Mutually Suspended Member would promote prompt and accurate clearance and settlement because it would allow relevant securities settlement obligations to be accepted by NSCC for clearance and settlement, which would reduce the size of the related settlement obligations for both the Mutually Suspended Member and its assigned delivery counterparties through netting through NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation. Further, this proposal would reduce the circumstances in which OCC's Guaranty would continue to apply to these settlement obligations, to be settled on a broker-to-broker basis between OCC Clearing Members, which could result in substantial collateral and liquidity requirements for OCC Clearing Members and that, in turn, could also increase a risk of default by the affected OCC Clearing Members at a time when a Common Member has already been suspended. For these reasons, NSCC believes that the proposed changes would be beneficial to and protective of OCC, NSCC, their participants, and the markets that they serve and that the proposed changes are therefore designed, in general, to protect investors and the public interest.

Rule 17Ad-22(e)(7) requires NSCC, in relevant part, to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor and manage the liquidity risk that arises in or is borne by NSCC and to, among other things, address foreseeable liquidity shortfalls that would not be covered by NSCC's liquid resources.⁵⁴ NSCC believes the proposal is consistent the requirements of Rule 17Ad-22(e)(7) because, any increase to NSCC's liquidity needs that may be created by applying the NSCC Guaranty to Defaulted Member Transactions would occur with a simultaneous increase to its liquidity resources in the form of the Guaranty Substitution Payment. Therefore, NSCC believes it will continue to adhere to the requirements of Rule 17Ad-22(e)(7) under the proposal.

Finally, Rule 17Ad-22(e)(20) requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor and manage risks related to any link that NSCC establishes with one or more other clearing agencies, financial market utilities, or trading markets.⁵⁵ The Existing Accord between OCC and NSCC is one such link. As described above, NSCC believes that implementation of the proposal would help manage the risks presented by the settlement link because, when the proposed provision is triggered by OCC, NSCC would receive the Guaranty Substitution Payment with respect to the relevant securities settlement obligations.

⁵³ 15 U.S.C. 78q-1(b)(3)(F).

⁵⁴ 17 CFR 240.17Ad-22(e)(7).

⁵⁵ 17 CFR 240.17Ad-22(e)(20).

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

Section 17A(b)(3)(I) of the Act⁵⁶ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. NSCC does not believe that the proposal would impose any burden on competition. This is because it would implement changes that would permit OCC in certain circumstances to make a Guaranty Substitution Payment to NSCC so that the NSCC Guaranty would take effect for the Defaulted NSCC Member Transactions, and the OCC Guaranty would end. The proposed changes would not inhibit access to NSCC's services in any way, applies to all Members and does not disadvantage or favor any particular user in relationship to another user. Accordingly, NSCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

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 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 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.

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 Act⁵⁷ for Commission action.

⁵⁶ 15 U.S.C. 78q-1(b)(3)(I).

⁵⁷ 15 U.S.C. 78s(b)(2).

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.

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

Not applicable.

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

Not applicable.

10. Advance Notice 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 3A – Impact Study Data. *Omitted and filed separately with the Commission. Confidential treatment of this Exhibit 3A pursuant to 17 CFR 240.24b-2 being requested.*

Exhibit 3B – Service Level Agreement between NSCC and OCC. *Omitted and filed separately with the Commission. Confidential treatment of this Exhibit 3B pursuant to 17 CFR 240.24b-2 being requested.*

Exhibit 4 – Not applicable.

Exhibit 5A – Proposed changes to NSCC Rules.

Exhibit 5B – Proposed changes to the Amended and Restated Stock Options and Futures Settlement Agreement between NSCC and OCC. *Omitted and filed separately with the Commission. Confidential treatment of this Exhibit 5B pursuant to 17 CFR 240.24b-2 being requested.*

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[____]; File No. SR-NSCC-2023-007)

[DATE]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Modify the Amended and Restated Stock Options and Futures Settlement Agreement and Make Certain Revisions to the NSCC Rules

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 August __, 2023, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to (1) modify the Amended and Restated Stock Options and Futures Settlement Agreement dated August 5, 2017 between NSCC and The Options Clearing Corporation (“OCC,” and together with NSCC, the “Clearing Agencies”) (“Existing Accord”)³ and (2) make certain revisions to Rule 18,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Existing Accord was previously approved by the Commission. See Securities Exchange Act Release Nos. 81266, 81260 (Jul. 31, 2017) (File Nos. SR-NSCC-2017-007; SR-OCC-2017-013), 82 FR 36484 (Aug. 4, 2017).

Procedure III and Addendum K of the NSCC Rules & Procedures (“NSCC Rules”)⁴ in connection with the proposed modifications to the Existing Accord, as described in greater detail 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

Executive Summary

NSCC is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, including options that contemplate the physical delivery

⁴ Capitalized terms not defined herein are defined in the NSCC Rules available at www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.

⁵ OCC also has filed a proposed rule change and an advance notice with the Commission in connection with this proposal. See File Nos. SR-OCC-2023-007 and SR-OCC-2023-801 (the “OCC Filing”).

of equities cleared by NSCC in exchange for cash (“physically settled” options).⁶ OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise/assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations. NSCC and OCC maintain a legal agreement, generally referred to by the parties as the “Accord” agreement, that governs the processing of such physically settled options and futures cleared by OCC that result in transactions in underlying equity securities to be cleared by NSCC (“Existing Accord”).

The Existing Accord establishes terms under which NSCC accepts for clearing certain securities transactions that result from the exercise and assignment of relevant options contracts and the maturity of futures contracts that are cleared and settled by OCC.⁷ It also establishes the time when OCC’s settlement guaranty in respect of those transactions ends and NSCC’s settlement guaranty begins.

The Existing Accord allows for a scenario in which NSCC could choose not to guarantee the settlement of such securities arising out of transactions. Specifically, NSCC is not obligated to guarantee settlement until its member has met its collateral requirements at NSCC. If NSCC chooses not to guarantee settlement, OCC would engage

⁶ The term “physically-settled” as used throughout the OCC Rulebook refers to cleared contracts that settle into their underlying interest (i.e., options or futures contracts that are not cash-settled). When a contract settles into its underlying interest, shares of stock are sent, i.e., delivered, to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option, and maturity in the case of a future.

⁷ Under the Existing Accord, such options and futures are defined as “E&A/Delivery Transactions,” which refers to “Exercise & Assignment Delivery Transactions.”

in an alternate method of settlement outside of NSCC. This scenario presents two primary problems. First, the cash required for OCC and its Clearing Members in certain market conditions to facilitate settlement outside of NSCC could be significantly more than the amount required if NSCC were to guarantee the relevant transactions. This is because settlement of the transactions in the underlying equity securities outside of NSCC would mean that they would no longer receive the benefit of netting through the facilities of NSCC. In such a scenario, the additional collateral required from Clearing Members to support OCC's continuing settlement guarantee would also have to be sufficiently liquid to properly manage the risks associated with those transactions being due on the second business day following the option exercise, or the relevant futures contract maturity date.

Based on an analysis of scenarios using historical data where it was assumed that OCC could not settle transactions through the facilities of NSCC, the worst-case outcome resulted in extreme liquidity demands – of over \$300 billion – for OCC to effect settlement via an alternative method, *e.g.*, by way of gross broker-to-broker settlement, as discussed in more detail below. OCC Clearing Members, by way of their contributions to the OCC Clearing Fund, would bear the brunt of this demand. Furthermore, there is no guarantee that OCC Clearing Members could fund the entire amount of any similar real-life scenarios. By contrast, projected GSPs identified during the study ranged from approximately \$419 million to over \$6 billion, also as discussed in more detail below.

The second primary problem relates to the significant operational complexities if settlement occurs outside of NSCC. More specifically, netting through NSCC reduces the volume and value of settlement obligations. For example, in 2022 it is estimated that

netting through NSCC's continuous net settlement ("CNS") accounting system⁸ reduced the value of CNS settlement obligations by approximately 98% or \$510 trillion from \$519 trillion to \$9 trillion. If settlement occurred outside of NSCC, on a broker-to-broker basis between OCC Clearing Members, for example, shares would not be netted, and Clearing Members would have to coordinate directly with each other to settle the relevant transactions. The operational complexities and uncertainty associated with alternate means of settlement would impact every market participant involved in a settlement of OCC-related transactions.

To address these problems, the Clearing Agencies are proposing to amend and restate the Existing Accord and make related changes to their respective rules that would allow OCC to elect to make a cash payment to NSCC following the default of a Common Member⁹ that would cause NSCC to guarantee settlement of that Common Member's transactions and, therefore, cause those transactions to be settled through processing by NSCC. As part of this proposal, OCC also would enhance its daily liquidity stress testing processes and procedures to account for the possibility of OCC making such a payment to NSCC in the event of a Common Member default. By making these enhancements to its stress testing, OCC could include the liquid resources necessary to make the payment in

⁸ See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation) of the NSCC Rules, supra note 4.

⁹ A firm that is both an OCC Clearing Member and an NSCC Member or is an OCC Clearing Member that has designated an NSCC Member to act on its behalf is referred to herein as a "Common Member". The term "Clearing Member" as used herein has the meaning provided in OCC's By-Laws. See OCC's By-laws & Rules, available at www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules. The term "Member" as used herein has the meaning provided in NSCC's Rules. See supra note 4.

its resource planning. The Clearing Agencies believe that by NSCC accepting such a payment from OCC the operational efficiencies and reduced costs related to the settlement of transactions through NSCC would limit market disruption following a Common Member default because settlement through NSCC following such a default would be less operationally complex and would be expected to require less liquidity and other collateral from market participants than the processes available to OCC for closing out positions. Additionally, proposed enhancements by OCC to its liquidity stress testing would add assurances that OCC could make such a payment in the event of a Common Member default. The Clearing Agencies believe that their respective clearing members and all other participants in the markets for which OCC provides clearance and settlement would benefit from OCC's ability to choose to make a cash payment to effect settlement through the facilities of NSCC. This change would provide more certainty around certain default scenarios and would blunt the financial and operational burdens market participants could experience in the case of most clearing member defaults.¹⁰

Background

OCC acts as a central counterparty clearing agency for U.S.-listed options and futures on a number of underlying financial assets including common stocks, currencies and stock indices. In connection with these services, OCC provides the OCC Guaranty pursuant to its By-Laws and Rules. NSCC acts as a central counterparty clearing agency for certain equity securities, corporate and municipal debt, exchange traded funds and unit investment trusts that are eligible for its services. Eligible trading activity may be

¹⁰ OCC filed its analysis of the financial impact of alternate means of settlement as an exhibit to the OCC Filing.

processed through NSCC's CNS system or Balance Order Account system,¹¹ where all eligible compared and recorded transactions for a particular settlement date are netted by issue into one net long (buy), net short (sell) or flat position. As a result, for each day with activity, each Member has a single deliver or receive obligation for each issue in which it has activity. In connection with these services, NSCC also provides the NSCC Guaranty pursuant to Addendum K of the NSCC Rules.

OCC's Rules provide that delivery of, and payment for, securities underlying certain exercised stock options and matured single stock futures that are physically settled are generally effected through the facilities of NSCC and are not settled through OCC's facilities.¹² OCC and NSCC executed the Existing Accord to facilitate, via NSCC's systems, the physical settlement of securities arising out of options and futures cleared by OCC. OCC Clearing Members that clear and settle physically settled options and futures transactions through OCC also are required under OCC's Rules¹³ to be Members of NSCC or to have appointed or nominated a Member of NSCC to act on its behalf. As noted above, these firms are referred to as "Common Members" in the Existing Accord.

Summary of the Existing Accord

The Existing Accord governs the transfer between OCC and NSCC of responsibility for settlement obligations that involve a delivery and receipt of stock in the settlement of physically settled options and futures that are cleared and settled by OCC

¹¹ See Rule 8 (Balance Order and Foreign Security Systems) and Procedure V (Balance Order Accounting Operation) of the NSCC Rules, supra note 4.

¹² See Chapter IX of OCC's Rules (Delivery of Underlying Securities and Payment), supra note 9.

¹³ See OCC Rule 901, supra note 9.

and for which the underlying securities are eligible for clearing through the facilities of NSCC (“E&A/Delivery Transactions”). It also establishes the time when OCC’s settlement guarantee (the “OCC Guaranty”) ends and NSCC’s settlement guarantee (the “NSCC Guaranty”)¹⁴ begins with respect to E&A/Delivery Transactions. However, in the case of a Common Member default¹⁵ NSCC can reject these settlement obligations, in which case the settlement guaranty would not transfer from OCC to NSCC, and OCC would not have a right to settle the transactions through the facilities of NSCC. Instead, OCC would have to engage in alternative methods of settlement that have the potential to create significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members.¹⁶ More specifically, this could involve broker-to-broker settlement between OCC Clearing Members.¹⁷ This settlement method is operationally

¹⁴ See Addendum K and Procedure III of the NSCC Rules, supra note 4.

¹⁵ A Common Member that has been suspended by OCC or for which NSCC has ceased to act is referred to as a “Mutually Suspended Member.”

¹⁶ For example, OCC evaluated certain Clearing Member default scenarios in which OCC assumed that NSCC would not accept the settlement obligations under the Existing Accord, including the default of a large Clearing Member coinciding with a monthly options expiration. OCC has estimated that in such a Clearing Member default scenario, the aggregate liquidity burden on OCC in connection with obligations having to be settled on a gross, broker-to-broker basis could reach a significantly high level. For example, in January 2022, the largest gross broker-to-broker settlement amount in the case of a larger Clearing Member default would have resulted in liquidity needs of approximately \$384,635,833,942. OCC provided the data and analysis as an exhibit to the OCC Filing.

¹⁷ In broker-to-broker settlement, Clearing Member parties are responsible for coordinating settlement – delivery and payment – among themselves on a transaction-by-transaction basis. Once transactions settle, the parties also have an obligation to affirmatively notify OCC so that OCC can close out the transactions. If either one of or both of the parties do not notify OCC, the transaction would

complex because it requires bilateral coordination directly between numerous Clearing Members rather than relying on NSCC to facilitate multilateral netting to settle the relevant settlement obligations. As described above, it also potentially could result in significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members because the transactions would not be netted through the facilities of NSCC. Alternatively, where NSCC accepts the E&A/Delivery Transactions from OCC, the OCC Guaranty ends and the NSCC Guaranty takes effect. The transactions are then netted through NSCC's systems, which allows settlement obligations for the same settlement date to be netted into a single deliver or receive obligation. This netting reduces the costs associated with securities transfers by reducing the number of securities movements required for settlement and further reduces operational and market risk. The benefits of such netting by NSCC may be significant with respect to the large volumes of E&A/Delivery Transactions processed during monthly options expiry periods.

Pursuant to the Existing Accord, on each trading day NSCC delivers to OCC a file that identifies the securities, including stocks, exchange-traded funds and exchange-traded notes, that are eligible (1) to settle through NSCC and (2) to be delivered in settlement of (i) exercises and assignments of stock options cleared and settled by OCC or (ii) delivery obligations from maturing stock futures cleared and settled by OCC. OCC, in turn, delivers to NSCC a file identifying securities to be delivered, or received, for physical settlement in connection with OCC transactions.¹⁸

remain open on OCC's books indefinitely until the time both parties have provided notice of settlement to OCC.

¹⁸ Each day that both OCC and NSCC are open for accepting trades for clearing is referred to as an "Activity Date" in the Existing Accord. Securities eligible for settlement at NSCC are referred to collectively as "Eligible Securities" in the

After NSCC receives the list of eligible transactions from OCC and NSCC has received all required deposits to the NSCC Clearing Fund from all Common Members taking into consideration amounts required to physically settle the OCC transactions, the OCC Guaranty would end and the NSCC Guaranty would begin with respect to physical settlement of the eligible OCC-related transactions.¹⁹ At this point, NSCC is solely responsible for settling the transactions.²⁰

Each day, NSCC is required to promptly notify OCC at the time the NSCC Guaranty takes effect. If NSCC rejects OCC's transactions due to an improper submission²¹ or if NSCC "ceases to act" for a Common Member,²² NSCC's Guaranty would not take effect for the affected transactions pursuant to the NSCC Rules.

Existing Accord. Eligible securities are settled at NSCC through NSCC's CNS Accounting Operation or NSCC's Balance Order Accounting Operation.

¹⁹ The term "NSCC Clearing Fund" as used herein has the same meaning as the term "Clearing Fund" as provided in the NSCC Rules. Procedure XV of the NSCC Rules provides that all NSCC Clearing Fund requirements and other deposits must be made within one hour of demand, unless NSCC determines otherwise, supra note 4.

²⁰ This is referred to in the Existing Accord as the "Guaranty Substitution Time," and the process of the substitution of the NSCC Guaranty for the OCC Guaranty with respect to E&A/Delivery Transactions is referred to as "Guaranty Substitution."

²¹ Guaranty Substitution by NSCC (discussed further below) does not occur with respect to an E&A/Delivery Transaction that is not submitted to NSCC in the proper format or that involves a security that is not identified as an Eligible Security on the then-current NSCC Eligibility Master File.

²² Under NSCC's Rules, a default would generally be referred to as a "cease to act" and could encompass a number of circumstances, such as an NSCC Member's failure to make a Required Fund Deposit in a timely fashion. See NSCC Rule 46 (Restrictions on Access to Services), supra note 4. An NSCC Member for which it has ceased to act is referred to in the Existing Accord as a "Defaulting NSCC

NSCC is required to promptly notify OCC if it ceases to act for a Common Member. Upon receiving such a notice, OCC would not continue to submit to NSCC any further unsettled transactions that involve such Common Member, unless authorized representatives of both OCC and NSCC otherwise consent. OCC would, however, deliver to NSCC a list of all transactions that have already been submitted to NSCC and that involve such Common Member. The NSCC Guaranty ordinarily would not take effect with respect to transactions for a Common Member for which NSCC has ceased to act, unless both Clearing Agencies agree otherwise. As such, NSCC does not have any existing contractual obligation to guarantee such Common Member's transactions. To the extent the NSCC Guaranty does not take effect, OCC's Guaranty would continue to apply, and, as described above, OCC would remain responsible for effecting the settlement of such Common Member's transactions pursuant to OCC's By-Laws and Rules.

As noted above, the Existing Accord does provide that the Clearing Agencies may agree to permit additional transactions for a Common Member default ("Defaulted NSCC Member Transactions") to be processed by NSCC while subject to the NSCC Guaranty. This optional feature, however, creates uncertainty for the Clearing Agencies and market participants about how Defaulted NSCC Member Transactions may be processed following a Common Member default and also does not provide NSCC with the ability to collect collateral from OCC that it may need to close out these additional transactions. While the optional feature would remain in the agreement as part of this proposal, the

Member." Transactions associated with a Defaulting NSCC Member are referred to as "Defaulted NSCC Member Transactions" in the Existing Accord.

proposed changes to the Existing Accord, as described below, could significantly reduce the likelihood that it would be utilized.

Proposed Changes to the Existing Accord

The proposed changes to the Existing Accord would permit OCC to make a cash payment, referred to as the “Guaranty Substitution Payment” or “GSP,” to NSCC. This cash payment could occur on either or both of the day that the Common Clearing Member becomes a Mutually Suspended Member and on the next business day. Upon NSCC’s receipt of the Guaranty Substitution Payment from OCC, the NSCC Guaranty would take effect for the Common Member’s transactions, and they would be accepted by NSCC for clearance and settlement.²³ OCC could use all Clearing Member contributions to the OCC Clearing Fund²⁴ and certain Margin Assets²⁵ of a defaulted Clearing Member to pay the GSP, as described in more detail below.

NSCC would calculate the Guaranty Substitution Payment as the sum of the Mutually Suspended Member’s unpaid required deposit to the NSCC Clearing Fund (“Required Fund Deposit”)²⁶ and the unpaid Supplemental Liquidity Deposit²⁷ obligation

²³ Acceptance of such transactions by NSCC would be subject to NSCC’s standard validation criteria for incoming trades. See NSCC Rule 7, supra note 4.

²⁴ The term “OCC Clearing Fund” as used herein has the same meaning as the term “Clearing Fund” in OCC’s By-Laws, supra note 9.

²⁵ The term “Margin Assets” as used herein has the same meaning as provided in OCC’s By-Laws, supra note 9.

²⁶ The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules. See supra note 4.

²⁷ Under the NSCC Rules, NSCC collects additional cash deposits from those Members who would generate the largest settlement debits in stressed market

that is attributable to E&A/Delivery Transactions. The proposed changes to the Existing Accord define how NSCC would calculate the Guaranty Substitution Payment.

More specifically, NSCC would first determine how much of the member's unpaid Clearing Fund requirement would be included in the GSP. NSCC would look at the day-over-day change in gross market value of the Mutually Suspended Member's positions as well as day-over-day change in the member's NSCC Clearing Fund requirements. Based on such changes, NSCC would identify how much of the change in the Clearing Fund requirement was attributable to E&A/Delivery Transactions coming from OCC. If 100 percent of the day-over-day change in the NSCC Clearing Fund requirement is attributable to activity coming from OCC, then the GSP would include 100 percent of the member's NSCC Clearing Fund requirement. If less than 100 percent of the change is attributable to activity coming from OCC, then the GSP would include that percent of the member's unpaid NSCC Clearing Fund requirement attributable to activity coming from OCC. NSCC would then determine the portion of the member's unpaid SLD obligation that is attributable to E&A/Delivery Transactions. As noted above, the GSP would be the sum of these two amounts. A member's NSCC Clearing Fund requirement and SLD obligation at NSCC are designed to address the credit and liquidity risks that a member poses to NSCC. The GSP calculation is intended to assess how much of a member's obligations arise out of activity coming from OCC so that the amount paid by OCC is commensurate with the risk to NSCC of guarantying such activity.

conditions, referred to as "Supplemental Liquidity Deposits" or "SLD." See Rule 4A of the NSCC Rules, supra note 4.

To permit OCC to anticipate the potential resources it would need to pay the GSP for a Mutually Suspended Member, each business day NSCC would provide OCC with (1) Required Fund Deposit and Supplemental Liquidity Deposit obligations, as calculated pursuant to the NSCC Rules, and (2) the gross market value of the E&A/Delivery Transactions and the gross market value of total Net Unsettled Positions (as such term is defined in the NSCC Rules). On options expiry days that fall on a Friday, NSCC would also provide OCC with information regarding liquidity needs and resources, and any intraday SLD requirements of Common Members. Such information would be delivered pursuant to the ongoing information sharing obligations under the Existing Accord (as proposed to be amended) and the Service Level Agreement (“SLA”) to which both NSCC and OCC are a party pursuant to Section 2 of the Existing Accord.²⁸ The SLA addresses specifics regarding the time, form and manner of various required notifications and actions described in the Accord and also includes information applicable under the Accord.

NSCC and OCC believe the proposed calculation of the Required Fund Deposit portion of the GSP is appropriate because it is designed to provide a reasonable proxy for the impact of the Mutually Suspended Member’s E&A/Delivery Transactions on its Required Fund Deposit. While impact study data did show that the proposed calculation could result in a GSP that overestimates or underestimates the Required Fund Deposit attributable to the Mutually Suspended Member’s E&A/Delivery Transactions,²⁹ current

²⁸ The revised SLA has been filed as an exhibit to this filing.

²⁹ The impact study was conducted at the Commission’s request to cover a three-day period and reviewed the ten Common Members with the largest Required Fund Deposits attributable to the Mutually Suspended Member’s E&A/Delivery Transactions. Over the 30 instances in the study, approximately 15 instances

technology constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member.³⁰

Implementing the ability for OCC to make the GSP and cause the E&A/Delivery Transactions to be cleared and settled through NSCC would promote the ability of OCC and NSCC to be efficient and effective in meeting the requirements of the markets they serve. This is because data demonstrates that the expected size of the GSP would be smaller than the amount of cash that would otherwise be needed by OCC and its Clearing Members to facilitate settlement outside of NSCC. More specifically, based on a historical study of alternate means of settlement available to OCC from September 2021 through September 2022, in the event that NSCC did not accept E&A/Delivery Transactions, the worst-case scenario peak liquidity need OCC identified was \$384,635,833,942 for settlement to occur on a gross broker-to-broker basis. OCC estimates that the corresponding GSP in this scenario would have been \$863,619,056. OCC also analyzed several other large liquidity demand amounts that were identified during the study if OCC effected settlement on a gross broker-to-broker basis.³¹ These

resulted in an underestimate of the Required Fund Deposit by an average of approximately \$112,900,926; four instances where the proxy calculation was the same as the Required Fund Deposit; and eleven instances of an overestimate of the Required Fund Deposit by an average of approximately \$59,654,583. NSCC filed additional detail related to the referenced study as an exhibit to this filing.

³⁰ OCC and NSCC have agreed that performing the necessary technology build at this time would delay the implementation of this proposal. Therefore, NSCC would consider incorporating those technology updates into future revisions to the Accord, for example in connection with a move to a shorter settlement cycle in the U.S. equities markets.

³¹ OCC filed additional detail related to the referenced study as an exhibit to the OCC Filing.

liquidity demand amounts and the largest liquidity demand amount OCC observed of \$384,635,833,942 substantially exceed the amount of liquid resources currently available to OCC.³² By contrast, projected GSPs identified during the study ranged from \$419,297,734 to \$6,281,228,428. For each of these projected GSP amounts, OCC observed that the Margin Assets and OCC Clearing Fund contributions that would have been required of Clearing Members in these scenarios would have been sufficient to satisfy the amount of the projected GSPs.

To help address the current technology constraint that prohibits NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member, proposed Section 6(b)(i) of the Existing Accord and related Section 7(d) of the SLA would provide that, with respect to a Mutually Suspended Member, either NSCC or OCC may require that the Required Fund Deposit portion of the GSP be re-calculated by calculating the Required Fund Deposit for the Mutually Suspended Member both before and after the delivery of the E&A/Delivery Transactions and utilize the precise amount that is attributable to that activity in the final GSP. If such a recalculation is required, the result would replace the Required Fund Deposit component of the GSP that was initially calculated. The SLD component of the GSP would be unchanged by such recalculation.

As the above demonstrates, the GSP is intended to address the significant collateral and liquidity requirements that could be required of OCC Clearing Members in the event of a Common Member default.

³² As of Mar. 31, 2023, OCC held approximately \$10.37 billion in qualifying liquid resources. See OCC Quantitative Disclosure, Jan. – Mar. 2023, [available at www.theocc.com/risk-management/pfmi-disclosures](http://www.theocc.com/risk-management/pfmi-disclosures).

Allowing OCC to make a GSP payment also is intended to allow for settlement processing to take place through the facilities of NSCC to retain operational efficiencies associated with the settlement process. Alternative settlement means such as broker-to-broker settlement add operational burdens because transactions would need to be settled individually on one-off bases. In contrast, NSCC's netting reduces the volume and value of settlement obligations that would need to be closed out in the market.³³ Because the clearance and settlement of obligations through NSCC's facilities following a Common Member default, including netting of E&A/Delivery Transactions with a Common Member's positions at NSCC would avoid these potentially significant operational burdens for OCC and its Clearing Members, OCC and NSCC believe that the proposed changes would limit market disruption relating to a Common Member default. NSCC netting significantly reduces the total number of obligations that require the exchange of money for settlement. Allowing more activity to be processed through NSCC's netting systems would minimize risk associated with the close out of those transactions following the default of a Common Member.

Amending the Existing Accord to define the terms and conditions under which Guaranty Substitution may occur, at OCC's election, with respect to Defaulted NSCC Member Transactions after a Common Member becomes a Mutually Suspended Member would also provide more certainty to both the Clearing Agencies and market participants generally about how a Mutually Suspended Member's Defaulted NSCC Member Transactions may be processed.

³³ CNS reduces the value of obligations that require financial settlement by approximately 98 percent, where, for example, approximately \$519 trillion in trades could be netted down to approximately \$9 trillion in net settlements.

NSCC and OCC have agreed it is appropriate to limit the availability of the proposed provision to the day of the Common Member default and the next business day because, based on historical cease to act events and simulations of cease to act events involving Common Members, most activity of a Mutually Suspended Member is closed out on those days.³⁴ Furthermore, the benefits of netting through NSCC's systems would be reduced for any activity submitted to NSCC after that time.

To implement these proposed changes to the Existing Accord, OCC and NSCC propose to make the following changes.

Section 1 – Definitions

First, new definitions would be added, and existing definitions would be amended in Section 1, which is the Definitions section.

The new defined terms would be as follows.

- The term “Close Out Transaction” would be defined to mean “the liquidation, termination or acceleration of one or more exercised or matured Stock Options³⁵ or Stock Futures³⁶ contracts, securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, master netting agreements or similar agreements of a Mutually Suspended Member pursuant to OCC Rules 1101 through 1111

³⁴ OCC filed data regarding simulated events as an exhibit to the OCC Filing.

³⁵ The term “Stock Options” is defined in the Existing Accord within the definition of “Eligible Securities” and refers to options issued by OCC.

³⁶ The term “Stock Futures” is defined in the Existing Accord within the definition of “Eligible Securities,” described below, and refers to stock futures contracts cleared by OCC.

and/or NSCC Rule 18.” This proposed definition would make it clear that the payment of the Guaranty Substitution Payment and NSCC’s subsequent acceptance of Defaulted NSCC Member Transactions for clearance and settlement are intended to fall within the “safe harbors” provided in the Bankruptcy Code,³⁷ the Securities Investor Protection Act,³⁸ and other similar laws.

- The term “Guaranty Substitution Payment” would be defined to mean “an amount calculated by NSCC in accordance with the calculations set forth in Appendix A [to the Existing Accord (as proposed to be amended)], to include two components: (i) a portion of the Mutually Suspended Member’s Required Fund Deposit deficit to NSCC at the time of the cease to act and (ii) a portion of the Mutually Suspended Member’s unpaid Supplemental Liquidity Deposit obligation at the time of the cease to act.”

³⁷ 11 U.S.C. § 101 et seq., including §§362(b)(6), (7), (17), (25) and (27) (exceptions to the automatic stay), §§546(e) – (g) and (j) (limitations on avoiding powers), and §§555 – 556 and 559 – 562 (contractual right to liquidate, terminate or accelerate certain contracts).

³⁸ 15 U.S.C. §§ 78aaa – III, including §78eee(b)(2)(C) (exceptions to the stay).

- The term “Mutually Suspended Member” would mean “any OCC Participating Member³⁹ that has been suspended by OCC that is also an NSCC Participating Member⁴⁰ for which NSCC has ceased to act.”
- The term “Required Fund Deposit” would have the meaning “provided in Rule 4 of NSCC’s Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.”
- The term “Supplemental Liquidity Deposit” would have the meaning “provided in Rule 4A of NSCC’s Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.”

The defined terms that would be amended in Section 1 of the Existing Accord are as follows.

³⁹ The term “OCC Participating Member” is defined in the Existing Accord to mean “(i) a Common Member; (ii) an OCC Clearing Member that is an ‘Appointing Clearing Member’ (as defined in Article I of OCC’s By-Laws) and has appointed an Appointed Clearing Member that is an NSCC Member to effect settlement of E&A/Delivery Transactions through NSCC on the Appointing Clearing Member’s behalf; (iii) an OCC Clearing Member that is an Appointed Clearing Member; or (iv) a Canadian Clearing Member.” No changes are proposed to this definition.

⁴⁰ The term “NSCC Participating Member” is defined in the Existing Accord to mean “(i) a Common Member; (ii) an NSCC Member that is an ‘Appointed Clearing Member’ (as defined in Article I of OCC’s By-Laws); or (iii) [The Canadian Depository for Securities Limited, or “CDS”]. For the avoidance of doubt, the Clearing Agencies agree that CDS is an NSCC Member for purposes of this Agreement.” No changes are proposed to this definition.

- The definition for the term “E&A/Delivery Transaction” generally contemplates a transaction that involves a delivery and receipt of stock in the settlement of physically settled options and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC. The definition would be amended to make clear that it would apply in respect of a “Close Out Transaction” of a “Mutually Suspended Member” as those terms are proposed to be defined (described above).
- The definition for the term “Eligible Securities” generally contemplates the securities that are eligible to be used for physical settlement under the Existing Accord. The term would be modified to clarify that this may include, for example, equities, exchange-traded funds and exchange-traded notes that are underlying securities for options issued by OCC.

Section 6 – Default by an NSCC Participating Member or OCC Participating Member

Section 6 of the Existing Accord provides that NSCC is required to provide certain notice to OCC in circumstances in which NSCC has ceased to act for a Common Member. Currently, Section 6(A)(ii) of the Existing Accord also requires NSCC to notify OCC if a Common Member has failed to satisfy its Clearing Fund obligations to NSCC, but for which NSCC has not yet ceased to act. In practice, this provision would trigger a number of obligations (described below) when a Common Member fails to satisfy its NSCC Clearing Fund obligations for any reason, including those due to an operational delay. Therefore, OCC and NSCC are proposing to remove the notification requirement under Section 6(A)(ii) from the Existing Accord. Under Section 7(d) of the Existing

Accord, NSCC and OCC are required to provide each other with general surveillance information regarding Common Members, which includes information regarding any Common Member that is considered by the other party to be in distress. Therefore, if a Common Member has failed to satisfy its NSCC Clearing Fund obligations and NSCC believes this failure is due to, for example, financial distress and not, for example, due to a known operational delay, and NSCC has not yet ceased to act for that Common Member, such notification to OCC would still occur but would be done pursuant to Section 7(d) of the Existing Accord (as proposed to be amended), and not Section 6(A)(ii). Notifications under Section 6 of the Existing Accord (as proposed to be amended) would be limited to instances when NSCC has actually ceased to act for a Common Member pursuant to the NSCC Rules.⁴¹

Following notice by NSCC that it has ceased to act for a Common Member, OCC is obligated in turn to deliver to NSCC a list of all E&A/Delivery Transactions (excluding certain transactions for which Guaranty Substitution does not occur) involving the Common Member.⁴² This provision would be amended to clarify that it applies in respect of such E&A/Delivery Transactions for the Common Member for which the NSCC Guaranty has not yet attached – meaning that Guaranty Substitution has not yet occurred.

As described above in the summary of the Existing Accord, where NSCC has ceased to act for a Common Member, the Existing Accord refers to the Common Member

⁴¹ See Rule 46 (Restrictions on Access to Services) of the NSCC Rules, supra note 4.

⁴² The section of the Existing Accord that addresses circumstances in which NSCC ceases to act and/or an NSCC Member defaults is currently part of Section 6(a). It would be re-designated as Section 6(b) for organizational purposes.

as the Defaulting NSCC Member and also refers to the relevant E&A/Delivery Transactions in connection with that Defaulting NSCC Member for which a Guaranty Substitution has not yet occurred as Defaulted NSCC Member Transactions.

If the Defaulting NSCC Member is also suspended by OCC, it would be covered by the proposed definition that is described above for a Mutually Suspended Member. For such a Mutually Suspended Member, the proposed changes in Section 6(b) would provide that NSCC, by a time agreed upon by the parties, would provide OCC with the amount of the Guaranty Substitution Payment as calculated by NSCC and related documentation regarding the calculation. The Guaranty Substitution Payment would be calculated pursuant to NSCC's Rules as that portion of the unmet Required Fund Deposit⁴³ and Supplemental Liquidity Deposit⁴⁴ obligations of the Mutually Suspended Member attributable to the Defaulted NSCC Member Transactions. By a time agreed upon by the parties,⁴⁵ OCC would then be required to either notify NSCC of its intent to make the full amount of the Guaranty Substitution Payment to NSCC or notify NSCC that it would not make the Guaranty Substitution Payment. If OCC makes the full amount of the Guaranty Substitution Payment, NSCC's guaranty would take effect at the time of NSCC's receipt of that payment and the OCC Guaranty would end.

⁴³ The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules, see supra note 4.

⁴⁴ The Supplemental Liquidity Deposit is calculated pursuant to Rule 4A (Supplemental Liquidity Deposits) of the NSCC Rules, see supra note 4.

⁴⁵ The time by which OCC would be required to notify NSCC of its intent would be defined in the Service Level Agreement. As of the time of this filing, the parties intend to set that time as one hour after OCC's receipt of the calculated Guaranty Substitution Payment from NSCC.

The proposed changes would further provide that if OCC does not suspend the Common Member (such that the Common Member would therefore not meet the proposed definition of a Mutually Suspended Member) or if OCC elects to not make the full amount of the Guaranty Substitution Payment to NSCC, then all of the Defaulted NSCC Member Transactions would be exited from NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation, as applicable, and Guaranty Substitution would not occur in respect thereof. Therefore, NSCC would continue to have no obligation to guarantee or settle the Defaulted NSCC Member Transactions, and the OCC Guaranty would continue to apply to them pursuant to OCC's By-Laws and Rules.⁴⁶

Proposed changes to the Existing Accord would also address the application of any Guaranty Substitution Payment by NSCC. Specifically, new Section 6(d) would provide that any Guaranty Substitution Payment made by OCC may be used by NSCC to satisfy any liability or obligation of the Mutually Suspended Clearing Member to NSCC on account of transactions involving the Mutually Suspended Clearing Member for which the NSCC Guaranty applies and to the extent that any amount of assets otherwise held by NSCC for the account of the Mutually Suspended Member (including any Required Fund Deposit or Supplemental Liquidity Deposit) are insufficient to satisfy its obligations related to transactions for which the NSCC Guaranty applies. Proposed changes to Section 6(d) would further provide for the return to OCC of any unused portion of the GSP. With regard to the portion of the Guaranty Substitution Payment that corresponds to a member's Supplemental Liquidity Deposit obligation, NSCC must return any unused

⁴⁶ Under the current and proposed terms of the Existing Accord, NSCC would be permitted to voluntarily guaranty and settle the Defaulted NSCC Member Transactions.

amount to OCC within fourteen (14) days following the conclusion of NSCC's settlement, close-out and/or liquidation. With regard to the portion of the Guaranty Substitution Payment that corresponds to a Required Fund Deposit, NSCC must return any unused amount to OCC under terms agreed to by the parties.⁴⁷

Other Proposed Changes

Certain other technical changes are also proposed to the Existing Accord to conform it to the proposed changes described above. For example, the preamble and the “*whereas*” clauses in the Preliminary Statement would be amended to clarify that the agreement is an amended and restated agreement and to summarize that the agreement would be modified to contemplate the Guaranty Substitution Payment structure. Section 1(c), which addresses the terms in the Existing Accord that are defined by reference to NSCC's Rules and Procedures and OCC's By-Laws and Rules would be modified to state that such terms would have the meaning then in effect at the time of any transaction or obligation that is covered by the agreement rather than stating that such terms have the meaning given to them as of the effective date of the agreement. This change is proposed to help ensure that the meaning of such terms in the agreement would not become inconsistent with the meaning in the NSCC Rules and/or OCC By-Laws and Rules, as they may be modified through proposed rule changes with the Commission.

Technical changes would be made to Sections 3(d) and (e) of the Existing Accord to provide that those provisions would not apply in the event new Section 6(b) described

⁴⁷ Such amounts would be returned to OCC as appropriate and in accordance with a Netting Contract and Limited Cross-Guaranty, by and among The Depository Trust Company, Fixed Income Clearing Corporation, NSCC and OCC, dated as of Jan. 1, 2003, as amended.

above, is triggered. Section 3(d) generally provides that OCC would no longer submit E&A/Delivery Transactions to NSCC involving a suspended OCC Participating Member. Similarly, Section 3(e) generally provides that OCC would no longer submit E&A/Delivery Transactions to NSCC involving an NSCC Participating Member for which NSCC has ceased to act. A proposed change would also be made to Section 5 of the Existing Accord to modify a reference to Section 5 of Article VI of OCC's By-Laws to instead provide that the updated cross-reference should be to Chapter IV of OCC's Rules.

Section 5 would also be amended to clarify that Guaranty Substitution occurs when NSCC has received both the Required Fund Deposit and Supplemental Liquidity Deposit, as calculated by NSCC in its sole discretion, from Common Members. The addition of the collection of the Supplemental Liquidity Deposit to the definition of the Guaranty Substitution Time in this Section 5 would reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment (as described above) and would make this definition consistent with that agreement.

In Section 7 of the Existing Accord, proposed changes would be made to provide that NSCC would provide to OCC information regarding a Common Member's Required Fund Deposit and Supplemental Liquidity Deposit obligations, to include the Supplemental Liquidity Deposit obligation in this notice requirement, and additionally that NSCC would provide OCC with information regarding the potential Guaranty Substitution Payment for the Common Member. On an options expiration date that is a Friday, NSCC would, by close of business on that day, also provide to OCC information regarding the intra-day liquidity requirement, intra-day liquidity resources and intra-day

calls for a Common Member that is subject to a Supplemental Liquidity Deposit at NSCC.

Finally, Section 14 of the Existing Accord would be modernized to provide that notices between the parties would be provided by e-mail rather than by hand, overnight delivery service or first-class mail.

Proposed Changes to NSCC Rules

In connection with the proposed changes to the Existing Accord, NSCC is also proposing changes to its Rules, described below.

First, NSCC would amend Rule 18 (Procedures for When the Corporation Ceases to Act), which describes the actions NSCC would take with respect to the transactions of a Member after NSCC has ceased to act for that Member.⁴⁸ The proposed changes would include a new Section 9(a) to specify that following a Member default, NSCC may continue to act and provide the NSCC Guaranty pursuant to a “Close-Out Agreement” such as the Existing Accord (as it is proposed to be amended);⁴⁹ a new Section 9(b) to specify that any transactions undertaken pursuant to a Close-Out Agreement would be treated as having been received, provided or undertaken for the account of the Member for which NSCC has ceased to act, but that any deposit, payment, financial assurance or other accommodation provided to NSCC pursuant to a Close-Out Agreement shall be returned or released as provided for in the agreement; and a new Section 9(c), to provide that NSCC shall have a lien upon, and may apply, any property of the defaulting Member

⁴⁸ See supra note 4.

⁴⁹ The Existing Accord is currently the only agreement that would be considered a “Close-Out Agreement” under this new Section 9(b).

in satisfaction of any obligation, liability or loss that relates to a transaction undertaken or service provided pursuant to a Close-Out Agreement.

NSCC would also propose clarifications to Sections 4, 6(b)(iii)(B) and 8 to use more precise references to the legal entity described in those sections of this Rule.

Second, NSCC would amend Section B of Procedure III and Addendum K of the NSCC Rules⁵⁰ to provide that the NSCC Guaranty would not attach to Defaulted NSCC Member Transactions except as provided for in the Existing Accord (as it is proposed to be amended), and that the NSCC Guaranty attaches, with respect to obligations arising from the exercise or assignment of OCC options settled at NSCC or stock futures contracts cleared by OCC, as provided for in the Existing Accord (as it is proposed to be amended) or other arrangement with OCC. Finally, the proposed changes to Procedure III would clarify that Guaranty Substitution occurs when NSCC has received both the Required Fund Deposit and Supplemental Liquidity Deposit, consistent with the proposed revisions to Section 5 of the Current Accord, described above. As noted above, the proposal to include the collection of the Supplemental Liquidity Deposit in connection with the Guaranty Substitution reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment.

Collectively, these proposed changes would establish and clarify the rights of both NSCC and a Member for which NSCC has ceased to act with respect to property held by NSCC and the operation and applicability of any Close-Out Agreement, and would make it clear that any payments received pursuant to a Close-Out Agreement and NSCC's acceptance of a Mutually Suspended Member's transactions for clearance and settlement

⁵⁰ See id.

pursuant to a Close-Out Agreement are intended to fall within the Bankruptcy Code and Securities Investor Protection Act “safe harbors.”

2. Statutory Basis

NSCC believes the proposed changes to the Existing Accord and its Rules are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes the proposed change is consistent with Section 17A(b)(3)(F) of the Act⁵¹ and Rules 17Ad-22(e)(7) and (20), each promulgated under the Act,⁵² for the reasons described below.

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed, in general, to protect investors and the public interest.⁵³ As described above, NSCC believes that providing OCC with the ability to make a Guaranty Substitution Payment to it with respect to any unmet obligations of a Mutually Suspended Member would promote prompt and accurate clearance and settlement because it would allow relevant securities settlement obligations to be accepted by NSCC for clearance and settlement, which would reduce the size of the related settlement obligations for both the Mutually Suspended Member and its assigned delivery counterparties through netting through NSCC’s CNS Accounting Operation and/or NSCC’s Balance Order Accounting Operation. Further, this proposal would reduce the circumstances in which OCC’s Guaranty would continue to apply to these

⁵¹ 15 U.S.C. 78q-1(b)(3)(F).

⁵² 17 CFR 240.17Ad-22(e)(7), (20).

⁵³ 15 U.S.C. 78q-1(b)(3)(F).

settlement obligations, to be settled on a broker-to-broker basis between OCC Clearing Members, which could result in substantial collateral and liquidity requirements for OCC Clearing Members and that, in turn, could also increase a risk of default by the affected OCC Clearing Members at a time when a Common Member has already been suspended. For these reasons, NSCC believes that the proposed changes would be beneficial to and protective of OCC, NSCC, their participants, and the markets that they serve and that the proposed changes are therefore designed, in general, to protect investors and the public interest.

Rule 17Ad-22(e)(7) requires NSCC, in relevant part, to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor and manage the liquidity risk that arises in or is borne by NSCC and to, among other things, address foreseeable liquidity shortfalls that would not be covered by NSCC's liquid resources.⁵⁴ NSCC believes the proposal is consistent the requirements of Rule 17Ad-22(e)(7) because, any increase to NSCC's liquidity needs that may be created by applying the NSCC Guaranty to Defaulted Member Transactions would occur with a simultaneous increase to its liquidity resources in the form of the Guaranty Substitution Payment. Therefore, NSCC believes it will continue to adhere to the requirements of Rule 17Ad-22(e)(7) under the proposal.

Finally, Rule 17Ad-22(e)(20) requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor and manage risks related to any link that NSCC establishes with one or more other clearing

⁵⁴ 17 CFR 240.17Ad-22(e)(7).

agencies, financial market utilities, or trading markets.⁵⁵ The Existing Accord between OCC and NSCC is one such link. As described above, NSCC believes that implementation of the proposal would help manage the risks presented by the settlement link because, when the proposed provision is triggered by OCC, NSCC would receive the Guaranty Substitution Payment with respect to the relevant securities settlement obligations.

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

Section 17A(b)(3)(I) of the Act⁵⁶ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. NSCC does not believe that the proposal would impose any burden on competition. This is because it would implement changes that would permit OCC in certain circumstances to make a Guaranty Substitution Payment to NSCC so that the NSCC Guaranty would take effect for the Defaulted NSCC Member Transactions, and the OCC Guaranty would end. The proposed changes would not inhibit access to NSCC's services in any way, applies to all Members and does not disadvantage or favor any particular user in relationship to another user. Accordingly, NSCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

⁵⁵ 17 CFR 240.17Ad-22(e)(20).

⁵⁶ 15 U.S.C. 78q-1(b)(3)(I).

(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 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

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

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form
(<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSCC-2023-007 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-2023-007. 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>). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-NSCC-2023-007 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.⁵⁷

Secretary

⁵⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 3A

PAGE REDACTED IN ITS ENTIRETY

EXHIBIT 3B

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

EXHIBIT 5A



**NATIONAL
SECURITIES
CLEARING
CORPORATION**

RULES & PROCEDURES

TEXT OF PROPOSED RULE CHANGE

Bold and underlined text indicates proposed added language.

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

* * *

RULE 18. PROCEDURES FOR WHEN THE CORPORATION CEASES TO ACT

SEC. 1. When the Corporation has ceased to act for a Member, Mutual Fund/Insurance Services Member, Municipal Comparison Only Member, Insurance Carrier/Retirement Services Member, TPA Member, TPP Member, Investment Manager/Agent Member, Fund Member, Data Services Only Member or AIP Member (each hereinafter referred to as a “participant” for purposes of this Rule 18) pursuant to Rule 46, it shall provide participants with notice pursuant to the provisions of Section 3 of Rule 45.

SEC. 2. (a) Except as otherwise may be determined by the Board of Directors the following transactions of a Member for which the Corporation has ceased to act shall be excluded from all operations of the Corporation applicable to such transactions:

- (i) any CNS trade which, at the time the Corporation ceased to act for such Member, was not guaranteed by the Corporation pursuant to Addendum K;
- (ii) any Balance Order trade which, at the time the Corporation ceased to act for such Member, was not guaranteed by the Corporation pursuant to Addendum K;
- (iii) any security orders issued in respect of Special Trades and transactions in Foreign Securities;
- (iv) any Long and Short Positions resulting from OW Obligations of the Member, in whole or in part, that were entered into the CNS Accounting Operation;
- (v) any cash adjustment relating to OW Obligations of the Member forwarded to settlement in accordance with the Obligation Warehouse procedure;
- (vi) any uncompleted ACATS transaction in accordance with Rule 50; and
- (vii) any uncompleted transaction processed through the ID Net Service in accordance with Rule 65.

Any transactions so excluded shall be settled between the parties and not through the Corporation.

(b) All CNS transactions and Balance Order transactions not excluded pursuant to paragraph (a) of this Section shall be handled as provided for in this Rule, or, if applicable, as may otherwise be provided for in these Rules and Procedures.

SEC. 3. (a) Notwithstanding any other provision of this Rule, promptly after the Corporation has ceased to act for a Member, the Corporation shall attempt to complete, in accordance with the provisions of this Section, the open RVP/DVP Transactions of such Member. The Corporation shall notify the relevant RVP/DVP Customer and the trustee or receiver of the Member (if one has been appointed) of the Corporation’s intent

to attempt to complete such RVP/DVP Transactions. Such notice shall also contain a statement notifying RVP/DVP Customers of the presumed waiver stated in paragraph (f) of this Section. Such notice shall be given by any commercially reasonable means, which shall not be limited to those means specified in Rule 45, and include, but are not limited to, Important Notice or notification to the RVP/DVP Customer's depository agent or its depository agent's depository.

(b) For purposes of this Rule 18, (i) the "CNS Position" shall be equal to the net of the Member's Long Positions and Short Positions in a CNS Security (which includes, without limitation, any position not excluded by the Corporation pursuant to Section 2), and (ii) the "Net Close Out Position" with respect to a CNS Security shall be equal to the sum of the (X) Long Position or Short Position in such CNS Security plus (Y) the quantity of each RVP/DVP Transaction pertaining to that CNS Security that the Corporation has completed pursuant to this Rule. In determining a CNS Position, the Corporation shall consider Long Positions to be positive numbers and Short Positions to be negative numbers. In determining the Net Close Out Position, the Corporation shall consider any quantity of securities it receives upon completion of an RVP/DVP transaction to be a positive number, and any quantity of securities it delivers upon completion of an RVP/DVP Transaction, to be a negative number.

(c) (i) Subject to paragraph (d) below, the Corporation shall be obligated to attempt to complete all RVP/DVP Transactions in a CNS Security of which the Corporation is aware prior to declining or ceasing to act, but only to the extent that the completion of such RVP/DVP Transactions would not cause the absolute value of the Net Close Out Position in such CNS Security to be greater than the absolute value of the CNS Position in such CNS Security. To the extent that this paragraph requires the Corporation to attempt to complete some but not all of the RVP/DVP Transactions in a particular CNS Security, the Corporation shall determine which of those RVP/DVP Transactions it shall attempt to complete in the same manner that it may, pursuant to subparagraph (ii), determine to attempt to complete any additional RVP/DVP Transactions.

(ii) In determining whether to attempt to complete any additional RVP/DVP Transaction beyond those RVP/DVP Transactions that the Corporation is required to attempt to complete pursuant to subparagraph (c)(i), the Board of Directors may consider any factor it, in its sole discretion, deems appropriate, including the willingness of an RVP/DVP Customer to guaranty fulfillment of its obligation to receive or deliver securities from or to the Corporation, but shall not consider the expected profit or loss arising from any individual RVP/DVP Transaction.

(d) Notwithstanding the provisions of paragraph (c), the Corporation may determine not to complete any open RVP/DVP Transaction pertaining to a particular CNS Security if (i) the Corporation reasonably believes that it cannot complete all RVP/DVP transactions in such CNS Security that it would be obligated to attempt to complete pursuant to paragraph (c)(i), whether due to the inability of the Corporation or the RVP/DVP Customer to make delivery or payment, the unwillingness of the RVP/DVP Customer to make delivery or payment, or otherwise, (ii) there exists

allegations of fraud or otherwise questionable activities with respect to such CNS Security, or (iii) the Corporation believes that the completion of an RVP/DVP Transaction in such CNS Security can not be consummated on a timely basis. If the Corporation makes such a determination, then it shall have no further obligations with respect to completing such RVP/DVP Transactions, and shall notify the RVP/DVP Customer (or its depository agent or its depository agent's depository) and the trustee or receiver of the Member (if any) of such determination.

(e) The Corporation will apply the same procedures to open positions arising from security Balance Orders¹ with respect to which there are RVP/DVP Transactions, to the extent to do so is practicable.

(f) All notices to RVP/DVP Customers (or the RVP/DVP Customer's depository agent or its depository agent's depository) shall include language to the effect that the RVP/DVP Customer, by completing the RVP/DVP Transaction, shall be conclusively presumed to have waived any claim with respect to such completed RVP/DVP Transaction, including, but not limited to, any net equity claim, against (i) the Member, (ii) the Member's appointed trustee or receiver (or any successor trustee or receiver), if any, or (iii) the Securities Investor Protection Corporation (SIPC), if the Member is subject to a SIPC liquidation order.

(g) The Net Close Out Positions shall be closed out by the Corporation as provided in Section 6.

SEC. 4. (a) (i) After the Corporation has ceased to act for a Member generally, the Corporation may accept from ~~him~~him envelopes to be delivered to other Members (whether such deliveries are pursuant to security balance orders issued by the Corporation or are otherwise provided for in these Rules) or it may decline to accept any such deliveries, in which case such Member shall make such deliveries and obtain payment therefor otherwise than through the Corporation.

(ii) After the Corporation has ceased to act for a Member generally, it shall decline to accept from other Members envelopes or orders to be delivered to such Member, in which case such other Members shall make such deliveries to such Member and obtain payment therefor otherwise than through the Corporation; provided, however, that the Corporation may accept such envelopes in order to complete open RVP/DVP Transactions pursuant to paragraph (e) of Section 3.

SEC. 5 After the Corporation has ceased to act for a Member generally, the Corporation may, in respect of the CNS System, take any of the following actions:

¹ The definitions contained in subsection (c)(ii) shall be deemed modified as follows when used in connection with Balance Orders: the term "CNS Position" shall refer to the Member's net Balance Order position, the term "Long Position" shall refer to such Member's net Balance Order receive obligations and the term "Short Position" shall refer to such Member's net Balance Order deliver obligations.

- (i) accept from such Member deliveries through the facilities of a Qualified Securities Depository;
- (ii) continue to instruct the Qualified Securities Depository designated by such Member to deliver CNS Securities from such Member's account at the Qualified Securities Depository to the Corporation's account in respect of such Member's Short Positions; or
- (iii) continue to instruct the Qualified Securities Depository designated by such Member to deliver from the Corporation's account at the Qualified Securities Depository CNS Securities received into the Corporation's account to the Member in respect of his Long Positions and may in connection therewith accord the Member priority, as provided in the Procedures, in respect of all other Members;

provided however, in the event insolvency proceedings have commenced against such Member, the actions contemplated by subparagraphs (ii) and (iii) may be taken to the extent permitted by the applicable rules of the relevant insolvency regime. In the event the Corporation declines to take the actions permitted by the foregoing subparagraphs, the open positions of such Member shall be closed out as provided in paragraph (a) of Section 6.

SEC. 6. (a) Promptly after the Corporation has given notice that it has ceased to act for the Member, and in a manner consistent with the provisions of Section 3, the Net Close Out Position with respect to each CNS Security shall be closed out (whether it be by buying in, selling out or otherwise liquidating the position) by the Corporation; provided however, if, in the opinion of the Corporation, the close out of a position in a specific security would create a disorderly market in that security, then the completion of such close-out shall be in the discretion of the Corporation.

If, in the aggregate, the closing out of CNS securities deliverable to or deliverable by such Member results in a profit, said profit shall be credited to the account of such Member with the Corporation. If, in the aggregate, the selling out and buying in of CNS securities deliverable to or deliverable by such Member results in a loss, said loss shall be debited to the account of such Member with the Corporation.

(b) Except as otherwise may be determined by the Board of Directors:

- (i) securities deliverable to or by the Member for whom the Corporation has ceased to act pursuant to security balance orders (except such securities as shall at the time the Corporation so ceased to act have been delivered pursuant to such orders) relating to Balance Order transactions not excluded pursuant to paragraph (a) of Section 2 shall be sold out or bought in by the Members named in such security balance orders without unnecessary delay in the best available market, subject to such terms and conditions as the Corporation may require, and the delivery of and payment for securities deliverable pursuant to such balance orders shall be governed by the provisions of this paragraph (b);

(ii) Separate accountings as to each Business Day, as hereinafter provided, shall be had with respect to the profits and losses of other Members (computed on the basis of the Settlement Prices shown on the security balance orders) resulting from the buying in or selling out of Balance Order Securities deliverable to or by the Member for whom the Corporation has ceased to act under security balance orders calling for such delivery on such day; provided, however, in the event that the Corporation instructs a Member that the buy in or sell out of an open Balance Order position must be for cash or guaranteed delivery, as the case may be, then any loss relating to such a buy in or sell out shall only be included in such accountings if such Member complied with such instructions.

(iii) With respect to each separate accounting for the close outs of Balance Order transactions directed by the Corporation:

(A) If a profit results from the selling out or the buying in of Balance Order Securities deliverable to or deliverable by the Member for whom the Corporation has ceased to act under a security balance order, the Member realizing such profit shall at once send a statement of the transaction to the Corporation and shall pay over such profit to it. Such profit shall be applied by the Corporation to the payment of losses incurred by such Member or by other Members in selling out or buying in Balance Order Securities deliverable to or deliverable by the Member, for whom the Corporation has ceased to act, under other security balance orders calling for delivery on the same day.

(B) If a loss results from the selling out or buying in of Balance Order Securities deliverable by the Member for whom the Corporation has ceased to act, under a security balance order the Member sustaining such loss shall at once send a statement of the transaction to the Corporation, which shall pay ~~him~~the Member the amount of the loss in the manner and to the extent hereinafter provided.

(C) (i) If, in the aggregate, the selling out and buying in of Balance Order Securities deliverable to or deliverable by the Member for whom the Corporation has ceased to act under security balance orders calling for delivery on the same day results in a profit, said profit shall be credited to the account with the Corporation of the Member for whom the Corporation has ceased to act.

(ii) If, in the aggregate, the selling out and buying in of Balance Order Securities deliverable to or deliverable by the Member for whom the Corporation has ceased to act under security balance orders calling for delivery on the same day results in a loss, the Corporation shall pay the same to the Members sustaining such losses, and debit the net amount to the account with the Corporation of the Member for whom the Corporation has ceased to act.

SEC 7. After the Corporation has ceased to act for a Member, the Corporation shall exclude any OW Obligations of that Member from further processing in the OW service.

SEC. 8. (a) After the Corporation has ceased to act for a participant either in respect to a particular transaction or transactions generally, the Corporation shall nevertheless have the same rights and remedies in respect to any debit balance due from such participant or any liability incurred on his behalf as though it had not ceased to act for ~~him~~the Member.

(b) As security for any and all liabilities now existing, or hereafter arising, of a Member or Mutual Fund/Insurance Services Member to the Corporation, the Corporation shall maintain a lien on all property placed by such participant in its possession, including but not limited to, securities and cash in the process of clearance or on deposit with, or pledged to, the Corporation in satisfaction and/or in excess of such participant's Clearing Fund deposit pursuant to Rule 4, Section 1, and Rule 12, Section 1; provided, however, that in no event shall the Corporation have any lien on securities carried by a Member or Mutual Fund/Insurance Services Member for the account of its customers where: (i) such lien would be prohibited under Rules 8c-1 and 15c2-1 of the Exchange Act, or (ii) such securities have been delivered from the Corporation's account at a Qualified Securities Depository pursuant to the ACATS Settlement Accounting Operation, and received into a Receiving Member's account at a Qualified Securities Depository.

SEC. 9. (a) Notwithstanding any contrary provision of these Rules (with the exception of Rules 41 and 42), if the Corporation has ceased to act for a Member either in respect to a particular transaction or transactions generally, and the Corporation is a party to an agreement with a Registered Clearing Agency or a derivatives clearing organization registered under the Commodity Exchange Act, 7 U.S.C. § 1 et seq., which relates to the provision of the Corporation's services in connection with such clearing agency or clearing organization's liquidation, termination or acceleration of one or more securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, master netting agreements or similar agreements of the Member with such clearing agency or clearing organization (for purposes of this Rule, a "Close-Out Agreement"), the Corporation shall continue to act to the extent provided in such Close-Out Agreement.

(b) Except as otherwise provided in the Close-Out Agreement, any deposit, payment, financial assurance or accommodation relating to a Member as to which the Corporation has ceased to act that is provided to the Corporation pursuant to a Close-Out Agreement, and any transaction undertaken or service provided by the Corporation which relates to a Member as to which the Corporation has ceased to act that is undertaken or provided by the Corporation pursuant to a Close-Out Agreement, shall be treated by the Corporation as having been received, provided or undertaken for the account of such Member for which the Corporation has ceased to act. Notwithstanding the preceding sentence, any

deposit, payment, financial assurance or accommodation provided to the Corporation pursuant to a Close-Out Agreement shall be returned or released by the Corporation as provided for in the applicable Close-Out Agreement.

(c) Except as otherwise provided in Section 8 of this Rule, the Corporation shall have a lien upon, and may apply, any property of a Member in the Corporation's possession for which the Corporation has ceased to act in satisfaction of any obligation, liability or loss that relates to a transaction undertaken or service provided by the Corporation in respect of such Member pursuant to a Close-Out Agreement.

* * *

PROCEDURE III. TRADE RECORDING SERVICE (INTERFACE WITH QUALIFIED CLEARING AGENCIES)

A. Introduction

Through arrangements with Qualified Clearing Agencies, the Corporation allows trades from different marketplaces to be cleared and settled through the Corporation.

B. Settlement of Option Exercises and Assignments and Settlement of Stock Futures Reaching Maturity

Through an arrangement (the "Accord") with The Options Clearing Corporation ("OCC"), Participating Members (defined below) may settle regular way through the facilities of the Corporation security and money obligations arising out of (i) the exercise or assignment of an option, and (ii) the maturity of a stock futures contract (collectively, "E&A/Delivery Transaction"); provided that (x) the E&A/Delivery Transaction is between two Participating Members, and (y) securities to be delivered or received in such settlement are either (1) CNS Securities, or (2) Balance Order Securities.

A "Participating Member" is (i) a Member that is also a member firm of OCC, as separately defined by the rules of that entity ("OCC Member"); (ii) a Member that has been appointed by an OCC Member to effect settlement of E&A/Delivery Transactions through the Corporation on the appointing OCC Member's behalf; (iii) an OCC Member that has appointed a Member to effect settlement of E&A/Delivery Transactions through the Corporation on its behalf; (iv) the Canadian Depository for Securities Limited ("CDS"); or (v) a Canadian clearing firm that is an OCC Member and settles activity at the Corporation through an identifiable subaccount in the account at the Corporation of CDS in which CDS effects settlement on behalf of such firm. Only Participating Members that are Members identified in (i), (ii), and (iv) above shall be named as counterparties on E&A/Delivery Transactions delivered to the Corporation pursuant to the Accord.

A Participating Member that wishes to utilize this service must execute an agreement with OCC in the form acceptable to OCC. OCC shall notify the Corporation of all Participating Members that have executed such agreements.

Unless otherwise agreed between OCC and the Corporation, E&A/Delivery Transactions are received by the Corporation from OCC each day on which both the Corporation and OCC are open for accepting trades for clearance. Subject to the paragraph below, the Corporation's guarantee pursuant to Addendum K shall become effective for each E&A/Delivery Transaction when the Required Fund Deposits to the Clearing Fund **and any Supplemental Liquidity Deposits pursuant to Rule 4A**, after taking into account that E&A/Delivery Transaction, are received by the Corporation from all Participating Members.

If (i) a Participating Member has failed to satisfy its Clearing Fund obligations to the Corporation pursuant to Procedure XV **or any Supplemental Liquidity Obligation pursuant to Rule 4A**, or (ii) the Corporation has ceased to act for a Participating Member pursuant to these Rules and Procedures prior to the time that the Corporation's guarantee of such Participating Member's E&A/Delivery Transactions become effective (such Participating Member, a "Defaulting Participating Member"), ~~then unless OCC has made an election pursuant to Section 6(b)(i) of the Accord,~~ none of the E&A/Delivery Transactions involving such defaulting Participating Member for which the Corporation's guarantee pursuant to Addendum K has not yet become effective shall be guaranteed by the Corporation, and all such E&A/Delivery Transactions shall be exited out of the CNS Accounting Operation or the Balance Order Accounting Operation, as applicable. ~~In such a case, unless otherwise agreed between OCC and the Corporation. The the~~ Corporation shall have no further obligation regarding the settlement of the exited E&A/Delivery Transactions, other than such obligations as the Corporation may have pursuant to its arrangement with OCC, and the non-defaulting Participating Members' Required Fund Deposit to the Clearing Fund **and Supplemental Liquidity Obligation** will be recalculated excluding the exited E&A/Delivery Transactions.

E&A/Delivery Transactions are routed to the Balance Order Accounting Operation or the CNS Accounting Operation and are reported to Members on such reports and in such formats as determined by the Corporation from time to time.

Exercised calls and assigned puts appear as purchases. Exercised puts and assigned calls appear as sells. Physical delivery of matured futures appear as purchases or sells.

The date of the maturity or exercise/assignment at OCC is recorded as the trade date for the maturity or exercise/assignment. The Settlement Date for such transactions is two days later. If the exercise occurs on a Saturday during exercise weekend, the preceding OCC business day is the trade date.

Regarding any E&A/Delivery Transaction submitted to the Corporation by OCC,

- (1) if and to the extent that a security to be delivered and received in settlement of such E&A/Delivery Transaction is not a CNS Security or a Balance Order Security, such transaction shall be treated as a trade-for-trade transaction and

the Corporation's guarantee pursuant to Addendum K shall not apply to these transactions; or

(2) if and to the extent that such E&A/Delivery Transaction is not submitted to the Corporation for regular way settlement, such transaction shall be processed in accordance with these Rules, as applicable.

* * *

ADDENDUM K

THE CORPORATION'S GUARANTY

The Corporation guarantees the completion of compared and locked-in CNS and balance order transactions from a fixed point in the clearance and settlement process.¹ CNS transactions are guaranteed as of the point they have: (i) for bilateral submissions by Members, been validated and compared by the Corporation pursuant to these Rules and Procedures, and (ii) for locked-in submissions, been validated by the Corporation pursuant to these Rules and Procedures. Balance order transactions are guaranteed as of the point they have: (i) for bilateral submissions by Members, been validated and compared by the Corporation pursuant to these Rules and Procedures, and (ii) for locked-in submissions, been validated by the Corporation pursuant to these Rules and Procedures, and, in either case, through the close of business on T+2. If the contra party to a same day or one day settling trade is a member of an interfacing clearing corporation, such guaranty shall not be applicable unless an agreement to guarantee such trade exists between the Corporation and the interfacing clearing corporation. The Corporation has also adopted a policy of guaranteeing the completion of when-issued and when-distributed trades, as of the point they have: (i) for bilateral submissions by Members, been validated and compared by the Corporation pursuant to these Rules and Procedures, and (ii) for locked-in submissions, been validated by the Corporation pursuant to these Rules and Procedures and will consider all when-issued and when-distributed trades of Members as if they were CNS transactions for surveillance purposes regardless of the accounting operation in which they ultimately settle.

¹ The ~~trade~~ Corporation's guaranty of obligations arising out of the exercise or assignment of ~~options~~ an option contract issued by The Options Clearing Corporation ("OCC") that ~~are~~ is settled at the Corporation-, or the maturity of a stock futures contract cleared by OCC, is addressed in a separate arrangement between the Corporation and ~~The Options Clearing Corporation~~ OCC, as referred to in Procedure III of the Rules and Procedures, and is not addressed in these Rules and Procedures.

EXHIBIT 5B

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY

PAGE REDACTED IN ITS ENTIRETY