SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89141; File No. SR-NSCC-2020-011)

June 24, 2020

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the Clearing Fund Maintenance Fee

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 June 16, 2020, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to the Clearing Fund Maintenance Fee ("Maintenance Fee") set forth in Addendum A of the NSCC Rules & Procedures ("Rules").[5]

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A).

4 17 CFR 240.19b-4(f)(2).

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

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify the existing Maintenance Fee set forth in Addendum A of the Rules.[6]

Maintenance Fee

The Maintenance Fee was implemented in 2016 pursuant to a proposed rule change ("2016 Rule Change") in order to (i) diversify NSCC's revenue sources, mitigating NSCC's dependence on revenues driven by trading volumes, and (ii) add a stable revenue source that would contribute to NSCC's operating margin by offsetting increasing costs and expenses.[7] The fee is charged to all NSCC Members and Limited Members that are required to make deposits to the NSCC Clearing Fund (collectively,

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6 Addendum A, Rules, supra note 5.

7 Securities Exchange Act Release No. 78525 (August 9, 2016), 81 FR 54146 (August 15, 2016) (SR-NSCC-2016-002).

"Members") in proportion to the Member's average monthly cash deposit to the Clearing Fund.

Since the 2016 Rule Change, the Maintenance Fee has been calculated monthly, in arrears, as the product of (A) 0.25 percent and (B) the average of the Member's actual cash deposit to the NSCC Clearing Fund as of the end of each day of the month, multiplied by the number of days in that month and divided by 360. However, by its terms, the fee is waived if the monthly rate of return on NSCC's investment of the cash portion of the Clearing Fund was less than 0.25 percent for the month ("Waiver Provision").

NSCC represents that the Waiver Provision was included for the benefit of Members. NSCC believed that if its monthly rate of return on the investment of cash from the Clearing Fund was less than 0.25 percent, then Members would likely be experiencing similarly low interest income on their deposits, including excess reserves, if applicable; in which case, NSCC would waive the fee. Although this approach exposed NSCC to the risk of not receiving revenue from the Maintenance Fee at a time of increased costs, NSCC did not believe that such an exposure would be common, significant, or long-term. Moreover, at the time of adoption, NSCC's default liquidity resources were not as diversified and robust as they are now, nor were such resources as costly or expensive to secure and maintain, as described below.

Increased Costs and Expenses

Due to the coronavirus global pandemic and overall reaction by the financial markets, NSCC's cost of funding has risen sharply in 2020, particularly for three of NSCC's key default liquidity resources: NSCC's committed 364-day line-of-credit facility with a consortium of banks ("LOC");[8] the proceeds of the issuance and private placement of short-term, unsecured notes in the form of commercial paper and extendable notes ("CP");[9] and proceeds of the issuance of medium-term notes ("MTNs").[10] This year's annual renewal of the LOC cost substantially more than past renewals due to a significant fee increase that NSCC had to pay to the lenders in order for NSCC to reach its target commitment size in the current economic environment. Meanwhile, for the CP program and the MTNs, the spread between the CP rates and MTN coupons that NSCC must pay and the interest it earns on the cash proceeds from those liquidity resources has widened significantly, making the resources considerably more expensive than they have been or would have been in past economic conditions.

Collectively, the unexpected increases in cost and expense to secure and maintain those default liquidity resources has added millions of dollars to NSCC's non-operating expense. If unaddressed, the increases could negatively impact NSCC's 2020 financial results and its access to default liquidity resources. A deteriorating operating margin could jeopardize NSCC's credit ratings. A downgrade to an NSCC credit rating could further increase such costs and expenses, but more importantly, could reduce the overall availability of default liquidity resources to NSCC, if investors or lending banks reduce their current levels of engagement with NSCC.

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8 See Securities Exchange Act Release No. 80605 (May 5, 2017), 82 FR 21850 (May 10, 2017) (SR-NSCC-2017-802).

9 See Securities Exchange Act Release Nos. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015) (SR-NSCC-2015-802); 82676 (February 9, 2018), 83 FR 6912 (February 15, 2018) (SR-NSCC-2017-807).

10 See Securities Exchange Act Release No. 87912 (January 8, 2020), 85 FR 2187 (January 14, 2020) (SR-NSCC-2019-802).

Modifications to the Maintenance Fee

To help address this immediate issue and better position NSCC going forward, with respect to its ability to fund its default liquidity resources in various economic environments, as well as to improve the overall functioning of the Maintenance Fee, NSCC is modifying the fee in three ways. First, NSCC is removing the Waiver Provision. Second, instead of using the fixed rate of 0.25 percent when calculating the Maintenance Fee, NSCC will calculate the fee using the corresponding month's average Interest Rate on Excess Reserves (i.e., the IOER rate) that is determined by the Board of Governors of the Federal Reserve System ("Federal Reserve").[11] Third, NSCC is setting a ceiling of 0.25 percent and a floor of 0.00 percent on the IOER rate used in the fee calculation.

NSCC is removing the Waiver Provision so that NSCC will be able to generate revenue from the Maintenance Fee even if NSCC's monthly rate of return on the investment of cash deposits from the Clearing Fund is less than 0.25 percent. The ability to generate such revenue under such circumstances is important in helping NSCC offset its costs and expenses in any economic environment.

NSCC is replacing the current fixed rate of 0.25 percent with the month's average IOER rate when calculating the Maintenance Fee because the IOER rate is (i) publicly available, well established, and a widely used benchmark (i.e., the rate is transparent); (ii) determined by the Federal Reserve (i.e., the rate is reliable); and (iii) the same rate that

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11 Policy Tools, Interest on Required Reserve Balances and Excess Balances, https://www.federalreserve.gov/monetarypolicy/reqresbalances.htm.

NSCC receives on the cash deposits it holds in its cash deposit account at the Federal Reserve Bank of New York (i.e., the rate is impartial).

NSCC is setting a ceiling of 0.25 percent on the IOER rate that it uses to calculate the Maintenance Fee so that Members will not be charged an amount greater than what is possible under the original calculation. However, it is setting a floor of 0.00 percent so if the IOER rate turns negative, NSCC will not owe Members an amount based on the calculation.

Changes to the Rules

To effectuate the changes described above, Subsection G (Clearing Fund Maintenance Fee) of Section V (Pass-Through and Other Fees) of Addendum A (Fee Structure) to the Rules will be modified to (i) remove the Waiver Provision, (ii) replace the existing fixed rate of 0.25 percent with the month's average IOER rate, and (iii) set a ceiling of 0.25 percent and a floor of 0.00 percent on the IOER rate used in the fee's calculation.

Implementation Timeframe

The above described changes to the Maintenance Fee will take effect immediately upon filing with the Commission, with the next assessment of the fee using those changes being for the month of July 2020.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act[12] requires that NSCC's Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

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[12] 15 U.S.C. 78q-1(b)(3)(D).

NSCC believes that the changes to the Maintenance Fee are consistent with this provision of the Act.

As described above, the proposal will modify the existing Maintenance Fee in three ways: (i) removing the Waiver Provision, (ii) calculating the fee using the month's average IOER rate, instead of the current fixed rate of 0.25 percent, and (iii) setting a ceiling of 0.25 percent and a floor of 0.00 percent on the IOER rate used in the calculation.

Because these changes do not alter how the Maintenance Fee is currently allocated (i.e., charged) to Members, NSCC believes the fee will continue to be equitably allocated. More specifically, as mentioned above, the Maintenance Fee is and will continue to be charged to all Members in proportion to the Member's average monthly cash deposit to the Clearing Fund. As such, and as is currently the case, Members that make greater use of NSCC's guaranteed services or which have activity in those services that present greater risk to NSCC will generally be subject to a larger Maintenance Fee because such Members will typically be required to maintain larger Clearing Fund deposits pursuant to the Rules.[13] Conversely, Members that use NSCC's guaranteed services less or which have activity that presents less risk will generally be subject to a smaller Maintenance Fee because such Members will typically be required to maintain smaller Clearing Fund deposits pursuant to the Rules.[14] The described changes do not adjust that allocation. For this reason, NSCC believes the Maintenance Fee will continue to be equitably allocated among Members.

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13 See Rule 4 and Procedure XV, Rules, supra note 5.

14 Id.

Similarly, NSCC believes that the Maintenance Fee will continue to be a reasonable fee under the described changes. First, use of the IOER rate in calculating the fee is reasonable because, as described above, the IOER rate is (i) transparent, (ii) reliable, and (iii) impartial. Second, use of the IOER rate, coupled with a ceiling of 0.25 percent, will not only ensure that Members are not assessed an amount greater than the original calculation, but that Members will be charged less at times when the IOER rate is less than 0.25 percent. Third, instituting a floor of 0.00 percent will avoid the unreasoned situation of NSCC having to pay Members based on calculating the fee with a negative IOER rate. Finally, although removal of the Waiver Provision means that Members could be assessed a Maintenance Fee at times when they may not otherwise have been assessed the fee, the removal of this provision enables NSCC to collect needed revenue from the fee in almost any economic environment. For this reason, NSCC believes the Maintenance Fee will continue to be reasonable.

Based on the forgoing, NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(D).[15]

(B) <u>Clearing Agency's Statement on Burden on Competition</u>

NSCC does not believe that the changes to the Maintenance Fee will have an impact on competition. First, as described above, the Maintenance Fee is charged ratably based on Members' use of NSCC's guaranteed services, as reflected in Members' cash deposits to the Clearing Fund. Thus, the fee is designed to be reflective of each Member's individual activity at NSCC.

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15 15 U.S.C. 78q-1(b)(3)(D).

Second, NSCC does not believe the changes to set a ceiling of 0.25 percent and a floor of 0.00 percent on the IOER rate used in calculating the Maintenance Fee will have any impact on competition because (i) a ceiling of 0.25 percent means that Members cannot be assessed an amount greater than what could have been assessed under the original calculation of the fee, and (ii) a floor of 0.00 percent means that NSCC will not have to pay Members if the fee were to be calculated with a negative IOER rate. In other words, both of these changes maintain the status quo in how the fee operates in these two respects.

Third, appreciating that the value of a dollar is not consistent for each Member, the change to remove the Waiver Provision could be a perceived burden on competition because Members could be assessed a fee at a time when they would not otherwise have been under the original calculation. However, the change to calculate the Maintenance Fee using the month's average IOER rate, instead of the current fixed rate of 0.25 percent, could relieve a competitive burden or promote competition because Members could be assessed a smaller fee than what may have been assessed using the original calculation. Members could choose to direct such savings to competitive aspects of their business. Therefore, in making these two changes together, NSCC believes the competitive aspects are possibly offsetting.

Notwithstanding the above, if removal of the Waiver Position, and the resulting imposition of the Maintenance Fee at a time when a Member would not have otherwise been assessed the fee, would prove to be a greater competitive burden for any one Member than the counterbalancing aspects of calculating the fee using the month's average IOER rate, instead of the current fixed rate of 0.25 percent, NSCC believes such a burden would be necessary and appropriate. The burden would be necessary because it is essential that NSCC offset some of its costs and expenses with revenue generated from the Maintenance Fee. As described above, not doing so could adversely affect NSCC's credit ratings, which could further increase funding or, possibly, decrease the availability of crucial liquidity resources for NSCC. The burden would be appropriate because, as described above, the Maintenance Fee is calculated, using a balanced formula, to assess a fee that is reflective of the Member's use of NSCC's guaranteed services, so that NSCC can defray some of its costs and expenses in providing those services.

(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. NSCC will notify the Commission of any written comments received by NSCC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and paragraph (f) of Rule 19b-4 thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b-4(f).

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-2020-011 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-2020-011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (http://dtcc.com/legal/sec-rule-filings.aspx). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2020-011 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.[18]

J. Matthew DeLesDernier
Assistant Secretary

[18] 17 CFR 200.30-3(a)(12).