SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94577; File No. SR-NSCC-2022-002)

April 1, 2022

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Make Certain Changes to Rule 52 to Support Processing of Interval Fund Repurchase Orders, Remove Underwriting Tender Offer Provisions and Make Certain Other Clarifications

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 March 24, 2022, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and subparagraph (f)(4)[4] of Rule 19b-4 thereunder. 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

(a) The proposed rule change of National Securities Clearing Corporation ("NSCC") is annexed hereto as Exhibit 5 and consists of modifications to Rule 52 of the NSCC's Rules & Procedures (the "Rules")[5] to (i) make certain changes to support

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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)(4).

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

processing of interval fund repurchase orders, (ii) remove the underwriting/tender offer provisions which are no longer in use and (iii) re-number Rule 52 and make certain other clarifications. The proposed changes are described in greater detail below.

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 proposed rule change consists of modifications to Rule 52 of the Rules[6] to (i) make certain changes to support processing of interval fund repurchase orders, (ii) remove the underwriting/tender offer provisions which are no longer in use and (iii) re-number Rule 52 and make certain other clarifications. The proposed changes are described in greater detail below.

(i) Interval Fund Repurchase Orders

NSCC is proposing to enhance Rule 52 to support processing of future-dated

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[6] Rule 52, id.

interval fund repurchase orders by allowing NSCC Members[7] to submit orders prior to the day the order is intended to take place ("Trade Date").

Interval Funds

Interval funds are closed-end funds that periodically offer to repurchase shares from their shareholders in compliance with Rule 23c-3 under the Investment Company Act of 1940.[8] Interval funds make periodic offers to buy back shares from shareholders as disclosed in the fund's prospectus and annual shareholder reports. Each offer will specify the repurchase period (start and end dates) during which the fund will accept shareholder repurchase requests to sell their shares back to the fund. The repurchase occurs on the last day of the repurchase period, or a later specified Trade Date.

Fund/SERV® order processing

NSCC Members can submit interval fund repurchase orders on behalf of shareholders to the Fund Members using Fund/SERV. Fund/SERV is an NSCC service described in Rule 52 that provides for processing and settling of Fund/SERV Eligible Funds,[9] which include certain mutual fund, bank collective fund and other pooled investment product transactions between fund companies, including interval funds, and their distributors.[10]

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7 For purposes of this filing, "NSCC Members" shall mean Members and Limited Members.

8 17 CFR 270.23c-3.

9 Fund/SERV Eligible Fund is defined as a fund or other pooled investment entity included in the list for which provision is made in Section 1.(c) of Rule 3. Definition of Fund/SERV Eligible Fund, Rule 1, supra note 5.

10 See Part A of Rule 52, supra note 5

Currently, Fund/SERV does not allow NSCC Members to submit interval fund repurchase orders prior to the Trade Date. Fund/SERV currently allows NSCC Members to submit repurchase orders for interval funds that are Fund/SERV Eligible Funds by submitting a repurchase order on the Trade Date, or to the extent established by each Fund Member, any day thereafter (referred to as "As-Of" orders).[11]

In 2018, the Broker Dealer Advisory Committee of the Investment Company Institute formed an Interval Funds Task Force ("IFTF")[12] to explore opportunities to improve interval fund operational efficiencies and reduce operating risk. The IFTF memorialized the operational challenges of interval funds in a series of whitepapers.[13] One of the challenges that the IFTF identified with respect to interval funds was the inability of funds to submit repurchase orders prior to the Trade Date through Fund/SERV.

Since NSCC Members are unable to submit the repurchase orders through Fund/SERV until the Trade Date, they must currently track all of the repurchase orders manually on their books until the applicable Trade Date. There is operational risk involved with holding these orders, rather than delivering them when received, including a risk that the NSCC Member holding the order fails to submit the order on the Trade

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11 Part A, Section 2 of Rule 52, supra note 5.

12 The Investment Company Institute is a trade association representing mutual funds, exchange-traded funds, closed-end funds and unit investment trusts. See https://www.ici.org. The members of the IFTF include fund companies offering interval funds, intermediaries, services providers and The Depository Trust & Clearing Corporation, NSCC's holding company.

13 See Interval Funds: Operational Challenges and the Industry's Way Forward (ici.org) and Consider This: Interval Fund Operational Practices (ici.org).

Date. Likewise, interval fund providers would like to be informed of these orders as soon as possible, to help them understand liquidity demands and anticipate whether they may need to prorate repurchase activity and to provide more time to correct an order if it contains incorrect information. Therefore, there is an appreciable benefit to interval funds, shareholders, and intermediaries to improve the straight through processing capabilities for interval fund repurchases through Fund/SERV. NSCC is proposing to allow NSCC Members to submit orders prior to the Trade Date to support submission of interval fund repurchase orders. Such orders would be submitted prior to the Trade Date but dated as of the Trade Date.

NSCC is also proposing to amend the Rules to provide for an acknowledgment process by NSCC Members relating to interval fund repurchase orders. Currently, the Rules provide that NSCC Members may only confirm or reject orders[14] or accept, confirm or reject corrections of orders.[15] In order to provide NSCC Members confidence that their repurchase orders have been received, NSCC is proposing to allow NSCC Members that receive interval fund repurchase orders to acknowledge orders and corrections relating to interval fund repurchase orders, in addition to confirming and rejecting such orders or corrections.

NSCC is also proposing to extend the confirmation deadline to accommodate interval fund repurchase orders that are submitted prior to the Trade Date. Currently NSCC provides that if any orders are not confirmed or rejected within a certain time period established by NSCC from time to time ("Confirmation Deadline") such orders

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14 See Part A, Section 4 of Rule 52, supra note 5.

15 See Part A, Section 8 of Rule 52, supra note 5.

will be deleted from the system.[16] NSCC has established that the Confirmation Deadline is 10 business days after the submission date. Since the submission date is currently on or after the Trade Date, the Confirmation Deadline is always at least 10 business days after the Trade Date. To accommodate repurchase orders that are submitted prior to the Trade Date, the acknowledgement process will provide that if an interval fund repurchase order with a future Trade Date is acknowledged prior to the Confirmation Deadline, the Confirmation Deadline will be extended to 10 business days after the Trade Date and the order will remain in the system until the extended Confirmation Deadline, provided the order was not previously confirmed or rejected. Therefore, as with other orders, the Confirmation Deadline would remain at least 10 business days after the Trade Date for such interval fund repurchase orders.

(ii) Removal of Underwriting/Tender Offer Provisions

In 1990 NSCC added provisions to Fund/SERV intended to support the processing of orders relating to mutual fund underwritings and tender offers (the "Underwriting/Tender Offer Provisions").[17] The provisions were intended to provide for automated processing of certain processes that were specific to underwritings and tender offers.[18] Previous to the addition, certain processes required manual intervention due to the extended settlement timeframe and ability to withdraw orders in underwritings and

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16 See Part A, Section 4 of Rule 52, supra note 5. Confirmation Deadline is not a defined term in the Rules and is being defined in this filing for ease of reference.

17 See Securities Exchange Release No. 28456 (September 20, 1990) (SR-NSCC-90-14), 55 FR 40028 (October 1, 1990). See also Part A, Section 17 of Rule 52, supra note 5.

18 Id.

tender offers.[19] Forms and system developments were made to support the use of Underwriting/Tender Offer Provisions, and certain NSCC Members used the underwriting/tender offer functionality after it was implemented.

Over the years, however, NSCC Members began using the underwriting/tender offer functionality less and less. NSCC believes that this is likely due to enhancements to the non-underwriting/tender offer order functionality of Fund/SERV that reduced the need for the underwriting/tender offer functionality, NSCC Members becoming more familiar with the non-underwriting/tender offer functionality of Fund/SERV and finding that the non-underwriting/tender offer functionality of Fund/SERV is sufficient to process the orders relating to underwritings and tender offers. NSCC Members have not used the underwriting/tender offer functionality for over a decade and NSCC no longer provides online forms to support the full functionality due to lack of NSCC Member use of the functionality and costs to maintain the functionality. Given that the interval fund repurchase process is similar in some respects to the offer process for underwritings and tender offers, NSCC considered updating the underwriting/tender offer functionality to support interval fund repurchase orders. NSCC decided, however, that it would be more efficient to update the non-underwriting/tender offer order functionality of Fund/SERV to support interval fund repurchases as proposed in this filing rather than to overhaul the Underwriting/Tender Offer Provisions and the underwriting/tender offer functionality.

Since the Underwriting/Tender Offer Provisions are no longer being used by NSCC Members and NSCC does not believe that the Underwriting/Tender Offer Provisions will be used by NSCC Members in the future, NSCC is proposing to remove

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19 Id.

the Underwriting/Tender Offer Provisions from the Rules.

(iii) Clarifications

In order to improve readability of Rule 52, NSCC is proposing to re-number and make certain other clarifications to Rule 52.

Certain section numbers in Rule 52 are reserved for future use and NSCC is proposing to remove those placeholders and renumber the existing sections.

In addition, Part A, Section 11(a) of Rule 52 currently provides that certain orders and money only related charges will settle in accordance with the time frames as established by NSCC from time to time, or in such extended or shortened time frame as established by agreement of the submitting parties; provided, that such modified time frame shall be no shorter than T (the trade date) and longer than T+7.[20] The provision relating to the time frame being no longer than T+7 is a legacy provision that is no longer applicable or necessary. Historically, NSCC's technology on its platform did not allow for the settlement timeframe to be longer than T+7. Such technology restriction no longer exists. As such, NSCC is proposing to delete the provision that the time frame as modified by the submitting parties may be no longer than T+7.

(iv) Proposed Rule Changes

NSCC is proposing to amend Part A, Section 2 of Rule 52 to provide that orders may be submitted prior to the Trade Date to support the processing of interval fund repurchase orders. NSCC is also proposing to amend Part A, Sections 4 and 8 of Rule 52 to provide for the acknowledgment of interval fund repurchase orders and corrections as described above.

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20 See Part A, Section 11(a) of Rule 52, supra note 5.

NSCC is proposing to delete the Underwriting/Tender Offer Provisions in Part A, Section 17 of Rule 52 and delete a reference to Part A, Section 17 currently in Part A, Section 16 of Rule 52. NSCC is also proposing to delete a number of section number references in Rule 52 that are currently reserved for future use and renumber the existing section numbers to reflect the deletion of such section numbers and the deletion of the Underwriting/Tender Offer Provisions. NSCC is also proposing to delete the phrase "and no longer than T+7" in Part A, Section 11(a) of Rule 52 as such legacy phrase is no longer applicable or necessary.

(v) Implementation

NSCC expects to implement the proposed rule changes on March 28, 2022. As proposed, a legend would be added to Rule 52 stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend would also indicate that the proposed rule change would be implemented on March 28, 2022, indicate the file number of this proposal, and indicate that once this proposal is implemented the legend would automatically be removed.

2. Statutory Basis

NSCC believes that the proposal is consistent with the requirements of the Securities Exchange Act of 1934 ("Act") and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes that the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act[21] and Rule 17Ad-22(e)(21) promulgated under the Act.[22]

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21 15 U.S.C. 78q-1(b)(3)(F).

22 17 CFR 240.17Ad-22(e)(21).

Section 17A(b)(3)(F) of the Act,[23] requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions. The proposed changes to support interval fund repurchase orders are consistent with this provision because such changes would enhance the ability of NSCC Members to process interval fund repurchase orders. Providing a more efficient and streamlined process with respect to placing, acknowledging and settling interval fund repurchase orders would promote the prompt and accurate clearance and settlement of securities transactions by NSCC consistent with Section 17A(b)(3)(F) of the Act.[24]

The removal of the Underwriting/Tender Offer Provisions, the deletion of the section numbers in Rule 52 that are reserved for future use, the renumbering in Rule 52 described above and the removal of the phrase "and no longer than T+7" in Part A of Section 11(a) are also consistent with this provision because the proposed changes would enhance clarity and transparency for participants with respect to services offered by NSCC allowing NSCC Members to have a better understanding of the Rules relating to Mutual Fund Services. Having clear and accurate Rules would help NSCC Members to better understand their rights and obligations regarding NSCC's services. NSCC believes that when NSCC Members better understand their rights and obligations regarding NSCC's services, they can act in accordance with the Rules. NSCC believes that better enabling NSCC Members to comply with the Rules would promote the prompt and

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23 15 U.S.C. 78q-1(b)(3)(F).

24 Id.

accurate clearance and settlement of securities transactions by NSCC consistent with Section 17A(b)(3)(F) of the Act.[25]

In addition, the proposed rule change is designed to comply with Rule 17Ad 22(e)(21) promulgated under the Act.[26] Rule 17Ad-22(e)(21) under the Act requires NSCC to, inter alia, establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves. The proposed rule change would enhance the ability of NSCC Members to process interval fund repurchase orders providing a more efficient and streamlined process with respect to placing, acknowledging and settling interval fund repurchase orders. Therefore, by establishing a more efficient and effective process for NSCC Members to process interval fund repurchase orders, NSCC believes that the proposed change is consistent with the requirements of Rule 17Ad-22(e)(21), promulgated under the Act.[27].

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

NSCC does not believe that the proposed changes would have an adverse impact, or impose a burden, on competition. These proposed changes would improve the ability of NSCC Members to process interval fund repurchase orders and enhance the clarity and transparency of the Rules and would not be adding any obligations on NSCC Members that are using NSCC's services. As such, the proposed changes would not impede any

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[25] Id.

[26] 17 CFR 240.17Ad-22(e)(21).

[27] Id.

NSCC Members from engaging in the services or have an adverse impact on any NSCC Members. Moreover, the proposed changes may promote competition because the proposed changes would provide NSCC Members a more efficient method of processing interval fund repurchase orders.

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

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

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

All prospective commenters should follow the Commission's instructions on how to submit comments, available at https://www.sec.gov/regulatory-actions/how-to-submit-comments. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[28] of the Act and paragraph (f)[29] of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSCC-2022-002 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-2022-002. 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

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28 15 U.S.C 78s(b)(3)(A).

29 17 CFR 240.19b-4(f).

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 (https://dtcc.com/legal/sec-rule-filings.aspx). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2022-002 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.[30]

J. Matthew DeLesDernier
Assistant Secretary

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[30] 17 CFR 200.30-3(a)(12).