



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88163; File No. SR-NSCC-2020-002]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Enhance the Calculation of the Family-Issued Securities Charge

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 January 28, 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.³ 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 modifications to NSCC’s Rules and Procedures (“Rules”)⁴ in order to enhance the calculation of NSCC’s existing charge

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On January 28, 2020, NSCC filed this proposed rule change as an advance notice (SR-NSCC-2020-801) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b-4(n)(1)(i) under the Act, 17 CFR 240.19b-4(n)(1)(i). A copy of the advance notice is available at <http://www.dtcc.com/legal/sec-rule-filings.aspx>.

⁴ Terms not defined herein are defined in the Rules, available at www.dtcc.com/~media/Files/Downloads/legal/rules/nscc_rules.pdf.

applied to long positions in Family-Issued Securities⁵ (“FIS Charge”) by using the same haircut percentages for all Members and no longer using Members’ ratings on the Credit Risk Rating Matrix (“CRRM”)⁶ in calculating this charge, as described 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

NSCC is proposing to modify the Rules to enhance the calculation of the FIS Charge by using the same haircut percentages for all Members and no longer using Members’ ratings on the CRRM in calculating this charge. By using the same haircut percentages to calculate the FIS Charge for all Members, NSCC believes this proposed

⁵ A Family-Issued Security is defined in Rule 1 (Definitions and Descriptions) of the Rules as “a security that was issued by a Member or an affiliate of that Member.” Supra note 4.

⁶ See Rule 1 and Section 4 of Rule 2B of the Rules, supra note 4. See also Securities Exchange Act Release Nos. 80734 (May 19, 2017), 82 FR 24177 (May 25, 2017) (SR-DTC-2017-002, SR-FICC-2017-006, SR-NSCC-2017-002); and 80731 (May 19, 2017), 82 FR 24174 (May 25, 2017) (SR-DTC-2017-801, SR-FICC-2017-804, SR-NSCC-2017-801).

enhancement would better mitigate the specific wrong-way risk posed by long positions in Family-Issued Securities that the charge was designed to address, as described below.

Background

As a central counterparty, NSCC occupies an important role in the securities settlement system by interposing itself between counterparties to financial transactions, thereby reducing the risk faced by participants and contributing to global financial stability. The effectiveness of a central counterparty's risk controls and the adequacy of its financial resources are critical to achieving these risk-reducing goals. As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Fund Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.⁷ The Required Fund Deposit serves as each Member's margin.

The objective of a Member's Required Fund Deposit is to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event NSCC ceases to act for that Member (hereinafter referred to as a "default").⁸ The aggregate of all Members' Required Fund Deposits constitutes the Clearing Fund of NSCC.⁹ NSCC may access its Clearing Fund should a defaulting Member's own Required Fund Deposit

⁷ See Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the Rules, supra note 4.

⁸ The Rules identify when NSCC may cease to act for a Member and the types of actions NSCC may take. For example, NSCC may suspend a firm's membership with NSCC or prohibit or limit a Member's access to NSCC's services in the event that Member defaults on a financial or other obligation to NSCC. See Rule 46 (Restrictions on Access to Services) of the Rules, supra note 4.

⁹ See Rule 4 (Clearing Fund) of the Rules, supra note 4.

be insufficient to satisfy losses to NSCC caused by the liquidation of that Member's portfolio.¹⁰

Pursuant to the Rules, each Member's Required Fund Deposit amount consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV of the Rules.¹¹ NSCC regularly assesses the market, liquidity and other risks that its margining methodologies are designed to mitigate to evaluate whether margin levels are commensurate with the particular risk attributes of each relevant product, portfolio, and market.

Among the various risks that NSCC considers when evaluating the effectiveness of its margining methodology are its counterparty risks, including wrong-way risk. In particular, NSCC seeks to identify and mitigate its exposures to specific wrong-way risk, which is defined as the risk that an exposure to a counterparty is highly likely to increase when the creditworthiness of that counterparty deteriorates.¹² NSCC has identified exposure to specific wrong-way risk when it acts as central counterparty to a Member with long positions in Family-Issued Securities. In the event a Member with long positions in Family-Issued Securities defaults, NSCC would close out those positions following a likely drop in the creditworthiness of the issuer, possibly resulting in a loss to NSCC.

¹⁰ Id.

¹¹ Supra note 4.

¹² See Principles for financial market infrastructures, issued by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions, pg. 47 n.65 (April 2012), available at <http://www.bis.org/publ/cpss101a.pdf>.

In order to address this exposure to specific wrong-way risk, NSCC implemented the FIS Charge in 2015.¹³ The FIS Charge is applied to a Member's long positions in Family-Issued Securities, which are the positions NSCC would need to sell into the market following a Member default.¹⁴

When the FIS Charge was initially implemented, it was only applied to Members that were placed on the Watch List based on the CRRM rating.¹⁵ As part of its ongoing monitoring of its membership, NSCC utilizes the internal CRRM to evaluate its credit risk exposures to its Members based on a scale from strongest to weakest.¹⁶ Members that fall within the higher risk rating categories are considered on NSCC's Watch List and may be subject to enhanced surveillance or additional margin charges, as permitted under the Rules.¹⁷ Therefore, the FIS Charge was applied only to Members on the Watch List based on the reasoning that these Members present a heightened credit risk to NSCC or have demonstrated higher risk related to their ability to meet settlement. However, in the Initial FIS Filing, NSCC proposed to further evaluate its exposure to wrong-way risk presented by positions in Family-Issued Securities by reviewing the impact of expanding

¹³ See Securities Exchange Act Release No. 76077 (October 5, 2015), 80 FR 61256 (October 9, 2015) (SR-NSCC-2015-003) (“Initial FIS Filing”).

¹⁴ Short positions in Family-Issued Securities are not subject to the FIS Charge and are subject to the applicable volatility charge, as provided for under the Rules. See Sections I.(A)(1)(a)(iv) and I.(A)(2)(a)(iv) of Procedure XV (Clearing Fund Formula and Other Matters) of the Rules, supra note 4.

¹⁵ See supra note 13.

¹⁶ See supra note 6.

¹⁷ Id.

the application of the FIS Charge to positions in Family-Issued Securities of all Members.¹⁸

Following that evaluation, NSCC implemented the current methodology for calculating the FIS Charge, which expanded the application of the charge to all Members, but continues to take into account Members' ratings on the CRRM in calculating the applicable charge.¹⁹ Therefore, under the current methodology, in calculating its Members' Required Fund Deposits, NSCC first excludes long positions in Family-Issued Securities of Members from the applicable volatility charge, and instead charges an amount calculated by multiplying the absolute value of the long Net Unsettled Positions (as such term is defined in Procedure XV of the Rules) in that Member's Family-Issued Securities by a percentage that is no less than 40 percent.²⁰ The percentage that is used in calculating the FIS Charge depends on a Member's rating on the CRRM. Under Procedure XV of the Rules, long Net Unsettled Positions in (1) fixed income securities that are Family-Issued Securities are charged a haircut rate of no less than 80 percent for Members that are rated 6 or 7 on the CRRM, and no less than 40 percent for Members that are rated 1 through 5 on the CRRM; and (2) equity securities that are Family-Issued Securities are charged a haircut rate of 100 percent for Members that are rated 6 or 7 on the CRRM, and no less than 50 percent for Members that are rated 1 through 5 on the

¹⁸ Supra note 13, at 61257.

¹⁹ See Securities Exchange Act Release Nos. 81550 (September 7, 2017), 82 FR 43061 (September 13, 2017) (SR-NSCC-2017-010); and 81545 (September 7, 2017), 82 FR 43054 (September 13, 2017) (SR-NSCC-2017-804).

²⁰ See Sections I.(A)(1)(a)(iv) and I.(A)(2)(a)(iv) of Procedure XV (Clearing Fund Formula and Other Matters) of the Rules, supra note 4.

CRRM.²¹ The haircut rates used in the FIS Charge as applied to positions in fixed income securities were calibrated based on historical corporate issue recovery rate data and address the risk that the Family-Issued Securities of a Member would be devalued in the event of that Member's default.

Proposed Change

NSCC is now proposing to enhance the methodology for calculating the FIS Charge by using the higher applicable percentage for all Members, and no longer using a Member's CRRM rating in the calculation.

Since implementation of the current calculation, NSCC has continued to monitor its exposure to specific wrong-way risk and determined that the risk characteristics to be considered when margining Family-Issued Securities extend beyond Members' creditworthiness as measured through the CRRM. More specifically, NSCC believes it may be exposed to specific wrong-way risk despite a Members' rating on the CRRM, and NSCC can better mitigate its exposure to this risk by calculating the FIS Charge without considering Members' CRRM ratings. While the current methodology appropriately assumes that Members with a higher rating on the CRRM present a heightened credit risk to NSCC or have demonstrated higher risk related to their ability to meet settlement, NSCC believes this approach does not take into account the risk that a firm may default due to unanticipated causes (referred to as a "jump-to-default" scenario) not captured by the CRRM rating. The CRRM rating necessarily relies on historical data as a predictor of future risks. Jump-to-default scenarios are triggered by unanticipated causes that could not be predicted based on historical trends or data, for example fraud or other bad acts by

²¹ Id.

management. The proposed change is designed to improve NSCC's ability to cover the specific wrong-way risk posed by long positions in Family-Issued Securities by applying the higher applicable percentage in calculating the FIS Charge for all Members.

In order to implement this proposal, NSCC would amend Sections I.(A)(1)(a)(iv) and I.(A)(2)(a)(iv) of Procedure XV of the Rules, which describe the methodology for calculating the FIS Charge, and provide that (1) fixed income securities that are Family-Issued Securities shall be charged a haircut rate of no less than 80 percent; and (2) equity securities that are Family-Issued Securities shall be charged a haircut rate of 100 percent.

2. Statutory Basis

NSCC believes that the proposed change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a covered clearing agency. In particular, NSCC believes that the proposed change is consistent with Section 17A(b)(3)(F) of the Act,²² and Rules 17Ad-22(e)(4)(i),²³ and (e)(6)(i) and (v),²⁴ each promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.²⁵ The proposed change would enhance the margin methodology applied to long positions in Family-Issued Securities by using the higher applicable percentage for all Members, rather than considering Members' CRRM

²² 15 U.S.C. 78q-1(b)(3)(F).

²³ 17 CFR 240.17Ad-22(e)(4)(i).

²⁴ 17 CFR 240.17Ad-22(e)(6)(i) and (v).

²⁵ 15 U.S.C. 78q-1(b)(3)(F).

ratings in the calculation. The proposal would improve NSCC's ability to mitigate specific wrong-way risk exposures in a jump-to-default scenario and, in this way, would assist NSCC in collecting margin that more accurately reflects NSCC's exposure to a Member that clears Family-Issued Securities. The proposal would also assist NSCC in its continuous efforts to improve the reliability and effectiveness of its risk-based margining methodology by taking into account specific wrong-way risk. As such, the proposal would help NSCC, as a central counterparty, promote robust risk management, and thus promote the prompt and accurate clearance and settlement of securities transactions, as well as, in general, protect investors and the public interest, consistent with the requirements of Section 17A(b)(3)(F) of the Act.²⁶

Rule 17Ad-22(e)(4)(i) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.²⁷ The specific wrong-way risk presented by Family-Issued Securities is the risk that, in the event a Member with unsettled long positions in Family-Issued Securities defaults, NSCC would close out those positions following a likely drop in the credit-worthiness of the issuer, possibly resulting in a loss to NSCC. The haircut rates used in calculating the FIS Charge as applied to positions in fixed income securities were calibrated based on historical

²⁶ Id.

²⁷ 17 CFR 240.17Ad-22(e)(4)(i).

corporate issue recovery rate data, and, therefore, address the risk that the Family-Issued Securities of a Member would be devalued in the event of that Member's default. The proposal to apply the higher haircuts to all Members would assist NSCC in addressing specific wrong-way risk exposures in a jump-to-default scenario. By addressing this additional risk exposure, NSCC believes the proposal would allow it to calculate the FIS Charge in a way that more accurately reflects the risk characteristics of Family-Issued Securities. The proposal would, therefore, permit NSCC to more accurately identify, measure, monitor and manage its credit exposures to Members with long positions in Family-Issued Securities, and would assist NSCC in collecting and maintaining financial resources that reflect its credit exposures to those Members. Therefore, NSCC believes the proposed change is consistent with Rule 17Ad-22(e)(4)(i).²⁸

Rule 17Ad-22(e)(6)(i) under the Act requires that each covered clearing agency that provides central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.²⁹ Rule 17Ad-22(e)(6)(v) under the Act requires that each covered clearing agency that provides central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system

²⁸ Id.

²⁹ 17 CFR 240.17Ad-22(e)(6)(i).

that, at a minimum, uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.³⁰

As stated above, long positions in Family-Issued Securities present NSCC with exposure to specific wrong-way risk that, in the event a Member with these positions defaults, NSCC would close out those positions following a likely drop in the credit-worthiness of the issuer, possibly resulting in a loss to NSCC. The haircut rates used in the current methodology would continue to be used in the proposed methodology and as applied to positions in fixed income securities were calibrated based on historical corporate issue recovery rate data and address the risk that the Family-Issued Securities of a Member would be devalued in the event of that Member's default. Therefore, the calculation of the charge would continue to reflect the risk characteristics of Family-Issued Securities. As described above, the proposed change to apply the higher haircut rates to all Members would improve NSCC's ability to mitigate its exposure to specific wrong-way risk in a jump-to-default scenario. In this way, the proposal would assist NSCC in maintaining a risk-based margin system that considers, and produces margin levels commensurate with, the risks and particular attributes of long positions in Family-Issued Securities. Additionally, NSCC believes the proposed enhancement to the methodology for calculating the FIS Charge is an appropriate method for measuring its credit exposures to its Members, because the FIS Charge would continue to account for the risk factors presented by these securities, *i.e.*, the risk that these securities would be

³⁰ 17 CFR 240.17Ad-22(e)(6)(v).

devalued in the event of a Member default. Therefore, NSCC believes the proposed change is consistent with Rule 17Ad-22(e)(6)(i) and (v).³¹

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

By enhancing the methodology for calculating the FIS Charge, and, therefore, increasing the amount of margin that Members may be charged under the Rules, the proposed change may impose a burden on competition. More specifically, those Members that are currently rated 1-5 on the CRRM would be subject to an increased FIS Charge relative to the current applicable FIS Charge. However, Members' ratings on the CRRM are re-evaluated periodically and change from time to time. Therefore, all Members could have become subject to the higher FIS Charge at any time under the current methodology if their CRRM rating was increased to a 6 or 7 following a periodic reevaluation of their rating. Similarly, the volume of Net Unsettled Positions in Family-Issued Securities in a Member's portfolio could change periodically. The proposed enhancement to the calculation of the FIS Charge would be imposed on all Members on an individualized basis, based on the positions in their cleared portfolio, in an amount reasonably calculated to mitigate the risks posed to NSCC by those positions. Therefore, Members that present similar Net Unsettled Positions would have similar impacts on their Required Fund Deposits, and, as such, NSCC does not believe any burden on competition imposed by the proposed change would be significant.

Further, NSCC believes that any burden on competition imposed by the proposed change would be both necessary and appropriate in furtherance of NSCC's efforts to

³¹ 17 CFR 240.17Ad-22(e)(6)(i) and (v).

mitigate its risk exposures and meet the requirements of the Act,³² as described in this filing and further below.

NSCC believes that the above described burden on competition that may be created by the proposed changes would be necessary in furtherance of the purposes of the Act, specifically Section 17A(b)(3)(F) of the Act,³³ because, as described above, the Rules must be designed to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.

NSCC also believes the proposed change would be necessary in order to support NSCC's compliance with Rules 17Ad-22(e)(4)(i), and (e)(6)(i) and (v),³⁴ each promulgated under the Act, which require NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to (x) effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence; (y) cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market; and (z) cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across

³² 15 U.S.C. 78q-1(b)(3)(I).

³³ 15 U.S.C. 78q-1(b)(3)(F).

³⁴ 17 CFR 240.17Ad-22(e)(4) and (e)(6).

products. As described above, NSCC believes implementing the proposed enhancements to the FIS Charge would improve the risk-based methodology that NSCC employs to measure market price risk and would better limit NSCC's credit exposures to Members, consistent with these requirements.

NSCC believes that the above described burden on competition that could be created by the proposed changes would be appropriate in furtherance of the purposes of the Act, because such changes have been designed to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest, as described in detail above.

The proposed rule change would use the higher applicable haircut percentage in calculating the FIS Charge for all Members. These haircut percentages as applied to positions in fixed income securities were calibrated to address the risk that the Family-Issued Securities of a Member would be devalued in the event of that Member's default. Therefore, the proposed FIS Charge would better address NSCC's exposures to specific wrong-way risk with respect to all Members' positions in Family-Issued Securities, particularly in jump-to-default scenarios. By mitigating specific wrong-way risk for NSCC, the proposed change would also mitigate risk for Members, because lowering the risk profile for NSCC would in turn lower the risk exposure that Members may have with respect to NSCC in its role as a central counterparty. Further, NSCC believes that any burden on competition that may be imposed by this proposal would be appropriate in furtherance of the purposes of the Act, because it is designed to meet NSCC's risk management goals and its regulatory obligations.

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

NSCC has not received or solicited any written comments relating to this proposal. 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

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.

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSCC-2020-002 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-2020-002. 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 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-2020-002 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.³⁵

J. Matthew DeLesDernier,

Assistant Secretary.

³⁵ 17 CFR 200.30-3(a)(12).

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