construction for terms that are defined either in the Act itself or elsewhere in the Commission's rules and regulations. Finally, rule 0–1 defines terms that serve as conditions to the availability of certain of the Commission's exemptive rules. More specifically, the term ''independent legal counsel,'' as defined in rule 0–1, sets out conditions that funds must meet in order to rely on any of ten exemptive rules (''exemptive rules'') under the Act.[4]

The Commission amended rule 0–1 to include the definition of the term ''independent legal counsel'' in 2001.[5] This amendment was designed to enhance the effectiveness of fund boards of directors and to better enable investors to assess the independence of those directors. The Commission also amended the exemptive rules to require that any person who serves as legal counsel to the independent directors of any fund that relies on any of the exemptive rules must be an ''independent legal counsel.'' This requirement was added because independent directors can better perform the responsibilities assigned to them under the Act and the rules if they have the assistance of truly independent legal counsel.

If the board's counsel has represented the fund's investment adviser, principal underwriter, administrator (collectively, ''management organizations'') or their ''control persons'' [6] during the past two years, rule 0–1 requires that the board's independent directors make a determination about the adequacy of the counsel's independence. A majority of the board's independent directors are required to reasonably determine, in the exercise of their judgment, that the counsel's prior or current representation of the management organizations or their control persons was sufficiently limited to conclude that it is unlikely to adversely affect the counsel's professional judgment and legal representation. Rule 0–1 also requires that a record for the basis of this determination is made in the minutes of the directors' meeting. In addition, the independent directors must have obtained an undertaking from the counsel to provide them with the information necessary to make their determination and to update promptly that information when the person begins to represent a management organization or control person, or when he or she materially increases his or her representation. Generally, the independent directors must re-evaluate their determination no less frequently than annually.

Any fund that relies on one of the exemptive rules must comply with the requirements in the definition of ''independent legal counsel'' under rule 0–1. We assume that approximately 3035 funds rely on at least one of the exemptive rules annually.[7] We further assume that the independent directors of approximately one-third (1,010) of those funds would need to make the required determination in order for their counsel to meet the definition of independent legal counsel.[8] We estimate that each of these 1,010 funds would be required to spend, on average, 0.75 hours annually to comply with the recordkeeping requirement associated with this determination, for a total annual burden of approximately 758 hours. Based on this estimate, the total annual cost for all funds' compliance with this rule is approximately $175,523. To calculate this total annual cost, the Commission staff assumed that approximately two-thirds of the total annual hour burden (505 hours) would be incurred by a compliance manager with an average hourly wage rate of $312 per hour,[9] and one-third of the annual hour burden (253 hours) would be incurred by compliance clerk with an average hourly wage rate of $71 per hour.[10]

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: >*www.reginfo.gov*<. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) >*www.reginfo.gov/public/do/PRAMain*< and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–06013 Filed 3–23–21; 8:45 am]

BILLING CODE 8011–01–P

[4] The relevant exemptive rules are: Rule 10f–3 (17 CFR 270.10f–3), rule 12b–1 (17 CFR 270.12b–1), rule 15a–4(b)(2) (17 CFR 270.15a–4(b)(2)), rule 17a–7 (17 CFR 270.17a–7), rule 17a–8 (17 CFR 270.17a–8), rule 17d–1(d)(7) (17 CFR 270.17d–1(d)(7)), rule 17e–1(c) (17 CFR 270.17e–1(c)), rule 17g–1 (17 CFR 270.17g–1), rule 18f–3 (17 CFR 270.18f–3), and rule 23c–3 (17 CFR 270.23c–3).

[5] *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) (66 FR 3735 (Jan. 16, 2001)).

[6] A ''control person'' is any person—other than a fund—directly or indirectly controlling, controlled by, or under common control, with any of the fund's management organizations. *See* 17 CFR 270.01(a)(6)(iv)(B).

[7] Based on statistics compiled by Commission staff, we estimate that there are approximately 3,373 funds that could rely on one or more of the exemptive rules (this figure reflects the three-year average of open-end and closed-end funds (3,269) and business development companies (104)). Of those funds, we assume that approximately 90 percent (3,035) actually rely on at least one exemptive rules annually.

[8] We assume that the independent directors of the remaining two-thirds of those funds will choose not to have counsel, or will rely on counsel who has not recently represented the fund's management organizations or control persons. In both circumstances, it would not be necessary for the fund's independent directors to make a determination about their counsel's independence.

[9] The estimated hourly wages used in this PRA analysis were derived from the Securities Industry and Financial Markets Association Reports on Management and Professional Earnings in the Securities Industry (2013) (modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead) (adjusted for inflation), and Office Salaries in the Securities Industry (2013) (modified to account for an 1800-hour work year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead) (adjusted for inflation).

[10] (505 × $312/hour) + (253 × $71/hour) = $175,523.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91359; File No. SR–NYSE–2020–96]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Rules Establishing Maximum Fee Rates To Be Charged by Member Organizations for Forwarding Proxy and Other Materials to Beneficial Owners

March 18, 2021.

I. Introduction

On December 2, 2020, New York Stock Exchange LLC (''NYSE'' or

''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to delete the maximum fee rates for forwarding proxy and other materials to beneficial owners set forth in NYSE Rules 451 and 465 and Section 402.10 of the NYSE Listed Company Manual (''Manual''), and establish in their place a requirement for member organizations to comply with any schedule of approved charges set forth in the rules of any other national securities exchange or association of which such member organization is a member. The proposed rule change was published for comment in the **Federal Register** on December 21, 2020.[3] On February 1, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

NYSE Rules 451 and 465, and the related provisions in Section 402.10 of the Manual, require NYSE member organizations that hold securities for beneficial owners in street name to solicit proxies from, and deliver proxy and issuer communication materials to, beneficial owners on behalf of issuers.[7] For this service, issuers reimburse NYSE member organizations for out-of-pocket, reasonable clerical, postage and other expenses incurred for a particular distribution.[8] This reimbursement structure stems from SEC Rules 14b–1 and 14b–2 under the Act,[9] which impose obligations on companies and nominees to ensure that beneficial owners receive proxy materials. These rules require companies to send their proxy materials to broker-dealers or banks, as nominees that hold securities in street name, for forwarding to beneficial owners, and to pay nominees for reasonable expenses, both direct and indirect, incurred in providing proxy information to beneficial owners.[10] The Commission's rules do not specify the fees that nominees can charge issuers for proxy distribution; rather, they state that issuers must reimburse the nominees for ''reasonable expenses'' incurred.[11]

Currently, the Supplementary Material to NYSE Rule 451, which is cross-referenced by the Supplementary Material to Rule 465 and Section 402.10 of the Manual, establish the maximum rates at which an NYSE member organization may be reimbursed for expenses incurred in connection with distributing proxy and other issuer communication materials to beneficial holders. FINRA Rule 2251 also sets forth a schedule of maximum rates that is substantively identical to the rate schedule specified in NYSE Rule 451.[12] The rules of other self-regulatory organizations (''SROs'') generally provide that member organizations must forward proxy and other issuer communication materials if they receive ''reasonable'' reimbursement, but they do not specify any schedule of maximum permitted charges.[13]

The Exchange proposes to amend Supplementary Materials .90–.96 to NYSE Rule 451 by deleting the provisions setting maximum reimbursement rates and replacing them with rule text stating that member organizations must comply with any schedule of approved charges set forth in the rules of any other national securities exchange or association of which such member organization is a member.[14] The Exchange also proposes to delete the cross-references to NYSE Rule 451.90–96 in Supplementary Material .20 to NYSE Rule 465 and replace it with rule text that is identical to the proposed new language in Supplementary Material .90 to NYSE Rule 451.[15] The Exchange states that the proposed rule change is not intended to take a position on the appropriateness of the fee schedules for proxy and other distributions currently set forth in NYSE Rules 451 and 465 or in the rules of any other SRO.[16]

According to the Exchange, since all NYSE member organizations that are subject to the fee schedule set forth in NYSE Rule 451 (and cross referenced by NYSE Rule 465) are also FINRA member firms, the proposal would effectively require member organizations to comply with the fee schedule set forth in FINRA Rule 2251.[17] The Exchange acknowledges that it has historically taken the lead in establishing the maximum proxy distribution reimbursement rates, but states that it no longer believes the Exchange is best positioned to retain this role going forward.[18] The Exchange states that all of the brokers who hold shares on behalf of customers in street name are FINRA members, while only a subset of them are members of the NYSE.[19] The Exchange also notes that a large and increasing number of the affected issuers are listed on Nasdaq, CBOE or other non-NYSE Group exchanges or are traded solely over the counter.[20] The Exchange further states that the development of the mutual fund industry has led to the existence of a

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90677 (December 15, 2020), 85 FR 83119 (''Notice''). Comments received on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nyse-2020-96/srnyse202096.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 91025, 86 FR 8246 (February 4, 2021). The Commission designated March 21, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* NYSE Rules 451 and 465, and Section 402.10 of the Manual; Notice, *supra* note 3, 85 FR at 83119. The ownership of shares in street name means that a shareholder, or ''beneficial owner,'' has purchased shares through a broker-dealer or bank, also known as a ''nominee.'' *See* Securities Exchange Act Release No. 70720 (October 18, 2013), 78 FR 63530, 63531 n.14 (October 24, 2013) (SR–NYSE–2013–07) (Order Granting Approval to Proposed Rule Change Amending NYSE Rules 451 and 465, and the Related Provisions of Section 402.10 of the NYSE Listed Company Manual) (''2013 Approval Order''). In contrast to direct ownership, where shares are directly registered in the name of the shareholder, shares held in street name are registered in the name of the nominee, or in the nominee name of a depository, such as the Depository Trust Company. *Id.*

[8] *See* NYSE Rules 451 and 465, and Section 402.10 of the Manual; 2013 Approval Order, *supra* note 7, 78 FR at 63531.

[9] 17 CFR 240.14b–1; 17 CFR 240.14b–2.

[10] *See* 17 CFR 240.14b–1 and 14b–2; *see also* 2013 Approval Order, *supra* note 7, 78 FR at 63531.

[11] *See* 17 CFR 240.14b–1 and 14b–2; *see also* 2013 Approval Order, *supra* note 7, 78 FR at 63531.

[12] *See* Notice, *supra* note 3, 85 FR at 83120. The Exchange states that FINRA Rule 2251 differs from NYSE Rule 451 in one respect. *See id.,* 85 FR at 83119, n.8. Specifically, FINRA has not adopted the Notice and Access fees for investment company shareholder report distributions set forth in Section 5 (Notice and Access Fees) of Supplementary Material .90 to NYSE Rule 451 as part of FINRA Rule 2251. *Id.*

[13] *See* Notice, *supra* note 3, 85 FR at 83119. *But see* NYSE American LLC Rule 576.80 (setting forth a schedule of approved charges by member organizations in connection with proxy solicitations).

[14] *See* proposed Supplementary Material .90 to NYSE Rule 451. The Exchange also proposes to delete Section 402.10 of the Manual, which replicates the fee schedule set forth in Supplementary Material .90–.96 to NYSE Rule 451.

[15] *See* proposed Supplementary Material .20 to NYSE Rule 465.

[16] *See* Notice, *supra* note 3, 85 FR at 83120. As noted above, FINRA and NYSE American LLC presently are the only SROs besides NYSE with rules that set forth a fee schedule.

[17] *See id.*

[18] *See id.,* 85 FR at 83119.

[19] *See id.,* 85 FR at 83120.

[20] *See id.,* 85 FR at 83120.

huge number of issuers who are not listed on any exchange.[21]

III. Summary of Comment Letters Received

Several commenters support the proposal.[22] One commenter believes the Commission should approve the proposed rule change ''[g]iven the technical nature of the change and NYSE's lack of interest in reforming, or even examining, the current fee system.'' [23] This commenter, however, believes it is imperative for the Commission to take this opportunity to reform the current system relating to processing fees for shareholder materials, including by facilitating competition in the distribution of shareholder materials through greater issuer participation in the selection process or, barring that, by reforming the processing fee schedule.[24] A number of commenters from the fund industry agree with the views expressed by this commenter.[25]

Several other commenters oppose the proposal. One commenter expressed the view that ''the most appropriate approach is to retain NYSE in the role and accelerate discussions about fundamental reform of the proxy communication process, abolishing the need for reimbursement fees and facilitating issuer-directed communications.'' [26] This commenter explained that ''NYSE has played a longstanding, central role in the industry dialogue on proxy reform and the fee-setting process, given its representation of both issuers and brokers,'' and so the commenter ''continue[s] to believe that its leadership will be critical to any transition to new arrangements for proxy communications and associated fees.'' [27] Another commenter stated that ''[i]nstead of approving a rule proposal that transfers regulatory oversight of proxy fees from one Self-Regulatory Organization to another,'' the Commission should reform the proxy processing system by ''replacing the current regulatory framework with one in which market forces determine fees for proxy distribution and other services.'' [28] This commenter added that, ''[u]nlike the stock exchanges, FINRA has no regulatory relationship with public companies, or other issuers of securities, and certainly cannot represent their interests or provide a mechanism for a balanced oversight process.'' [29] Similarly, a third commenter endorsed the ''market-driven solution'' advocated by other commenters, and ''does not support the proposal to transfer responsibility for the maximum fee-setting process to FINRA, whose membership represents the broker side of the industry but not the issuer side.'' [30]

Finally, FINRA opposes the proposal on the grounds that it ''is premature and incorrectly predicated on FINRA assuming primary responsibility for a regulatory regime that it has never led, and which FINRA is not best equipped to lead.'' [31] FINRA notes that ''historically the NYSE has taken the lead on proxy distribution fee schedules,'' and that FINRA has ''amend[ed] its proxy distribution rule fee schedule to conform with [NYSE's] in the interest of ensuring regulatory clarity and harmonization.'' [32] FINRA adds that ''[i]n light of the NYSE's historical experience with these rules derived in part from its listing relationship with many issuers, which FINRA lacks,'' FINRA would ''give strong consideration to rescinding its fee schedule'' if the Commission were to approve NYSE's proposal.[33] FINRA suggests that, ''prior to approving or disapproving the NYSE proposal, the Commission organize a public dialogue on the appropriate regulation of reimbursement of broker-dealer expenses for forwarding issuer documents.'' [34]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NYSE–2020–96 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.[35] Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule change's consistency with the Act and, in particular, with Section 6(b)(5) of the Act,[36] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[37]

As acknowledged by both the Exchange and commenters, the NYSE historically has taken the lead in establishing and updating the maximum rates of reimbursement for ''reasonable expenses'' that broker-dealers may seek from issuers in connection with the distribution of proxy and other materials to beneficial owners.[38] The

[21] *See id.,* 85 FR at 8319–20.

[22] *See* letters from Dorothy M. Donohue, Deputy General Counsel, Securities Regulation, and Joanne Kane, Senior Director, Operations and Transfer Agency, Investment Company Institute, dated January 8, 2021, at 2 (''ICI Letter''); Timothy W. McHale, Senior Vice President & Senior Counsel, Capital Research and Management Company, and Anthony M. Seiffert, Chief Compliance Officer, American Funds Service Company, Capital Group, dated January 11, 2021; Catherine L. Newell, General Counsel and Executive Vice President, Dimensional Fund Advisors LP, dated January 11, 2021; Peter J. Germain, Chief Legal Officer, Federated Hermes, Inc., dated January 11, 2021; Basil K. Fox, Jr., President, Franklin Templeton Investor Services, LLC, dated January 11, 2021; Heidi Hardin, Executive Vice President and General Counsel, MFS Investment Management, dated January 11, 2021; Thomas E. Faust Jr., Chairman and Chief Executive Officer, Eaton Vance Corp., dated January 14, 2021; and Noah Hamman, Chief Executive Officer, AdvisorShares Investments, LLC, dated January 14, 2021.

[23] *See* ICI Letter at 2.

[24] *Id.* at 2–4. This commenter also urged the Commission to emphasize that the existing fee schedules represent the maximum rates for ''reasonable'' processing fees, rather than an obligation to pay those exact fees. Several commenters from the fund industry agreed with the views expressed in the ICI Letter.

[25] *See supra* note 22.

[26] *See* letter from Paul Conn, President, Global Capital Markets, Computershare, dated January 11, 2021, at 4.

[27] *See id.*

[28] *See* letter from Niels Holch, Executive Director, Shareholder Communications Coalition, dated January 20, 2021, at 4.

[29] *See id.* at 5.

[30] *See* letter from Todd J. May, President, Securities Transfer Association, Inc., dated March 1, 2021, at 2.

[31] *See* letter from Marcia Asquith, Executive Vice President, Board & External Relations, FINRA, dated January 11, 2021, at 6.

[32] *See id.* at 4.

[33] *See id.* at 5–6.

[34] *See id.* at 6. FINRA also formally petitions the Commission to consider amending Rule 14b–1 to prescribe the fees charged for these expenses if the Commission determines that prescription of specific broker-dealer reimbursement fees is appropriate. *See id.*

[35] 15 U.S.C. 78s(b)(2)(B).

[36] 15 U.S.C. 78f(b)(5).

[37] *Id.*

[38] Since 1937, NYSE has required issuers, as a matter of policy, to reimburse its members for out of pocket costs for forwarding materials. *See* Concept Release on the U.S. Proxy System, Securities Exchange Act Release No. 62495 (July 14, 2010), 75 FR 42982, 42995 (July 22, 2010) (''Proxy

NYSE has periodically engaged in a formal process to review and update these maximum reimbursement rates, with the goal of ensuring that they are related to the reasonable proxy expenses of member firms,[39] and accordingly has gained considerable expertise in this area.[40] Further, because NYSE is a primary listing market, it has relationships with issuers as well as broker-dealers, and thus is well-positioned to take into account the views of both major stakeholder groups.[41]

NYSE is proposing to remove the provisions setting maximum reimbursement rates from its rules, and replace them with a requirement that an NYSE member firm comply with any schedule of approved charges set forth in the rules of any other SRO of which it is a member. This effectively would make the maximum reimbursement rates set forth in FINRA rules the industry reference, and establish FINRA as the lead SRO in this area.

In its proposal, NYSE expresses the view that FINRA is in a better position to take the lead in setting maximum reimbursement rates for the distribution of proxy and other issuer materials to beneficial owners because (1) all broker-dealers that hold shares in street name for customers are FINRA members, while only a subset of them are NYSE members, and (2) a large number of affected issuers are not listed on the NYSE. Unlike NYSE, however, FINRA does not have a relationship with issuers, who ultimately pay the reimbursement rates set forth in these rules. NYSE does not explain why, in the absence of a relationship with this important constituency, FINRA is in a better position than NYSE to assume the leadership role in this area. Further, NYSE has not explained the significance of the fact that only a subset of impacted broker-dealers are NYSE members, given that NYSE would appear well-positioned to consider the views of this constituency, or why the fact that all such broker-dealers are FINRA members puts FINRA in a materially better position to assume the leadership role in this area. Similarly, NYSE has not explained the significance of the fact that only a subset of impacted issuers are listed on NYSE, given that NYSE would appear well-positioned to consider the views of this constituency and, as discussed above, FINRA would not. As a result, the Commission believes there are questions as to whether NYSE's proposal is consistent with Section 6(b)(5) of the Act and, in particular, its requirements that the rules of the Exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that, under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [42] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[43] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[44]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act [45] to determine whether the proposal should be approved or disapproved.

V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written view of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[46]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by April 14, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 28, 2021.

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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–96 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–96. This file number should be included on the subject line if email 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

Concept Release''). NYSE's reimbursement rates were formally established by rule in 1952, and have been revised periodically since then. *See id.*

[39] Today's maximum rates set forth in NYSE Rules 451 and 465 are the product of several multi-year efforts lead by NYSE. The current fee structure was first established by NYSE as part of a pilot program in 1997 that was permanently approved by the Commission in 2002 and this basic fee structure, with some updates, remains in place today on the NYSE. The most recent NYSE review of the fees involved the establishment of NYSE's Proxy Fee Advisory Committee (''PFAC'') in 2010, which provided a report and recommendations to NYSE. NYSE proposed to adopt the PFAC fee recommendations and the Commission approved these changes in 2013. *See* 2013 Approval Order, *supra* note 7.

[40] *See* 2013 Approval Order, *supra* note 7. The rules of national securities exchanges and FINRA follow the NYSE fee schedule as reasonable rates of reimbursement for distribution of proxy and other material to beneficial owners. *See* Securities Exchange Act Release No. 71272 (January 9, 2014), 79 FR 2741 (January 15, 2014) (SR–FINRA–2013–056) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 2251).

[41] *See* Proxy Concept Release, *supra* note 38, 75 FR at 42995.

[42] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[43] *See id.*

[44] *See id.*

[45] 15 U.S.C. 78s(b)(2)(B).

[46] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 such filing also will be available for inspection and copying at the principal office of the Exchange. 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–NYSE–2020–96 and should be submitted on or before April 14, 2021. Rebuttal comments should be submitted by April 28, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–06000 Filed 3–23–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91350; File No. SR–NSCC–2021–002]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Supplemental Liquidity Deposit Requirements

March 18, 2021.

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 5, 2021, 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 Rule 4(A) (Supplemental Liquidity Deposits) of the NSCC's Rules & Procedures (''Rules'') to (1) calculate and collect, when applicable, supplemental liquidity deposits to NSCC's Clearing Fund (''Supplemental Liquidity Deposits,'' or ''SLD'') on a daily basis rather than only in advance of the monthly expiration of stock options (defined in Rule 4(A) as ''Options Expiration Activity Period''); (2) establish an intraday SLD obligation that would apply in advance of Options Expiration Activity Periods and may also be applied on other days, as needed; (3) implement an alternative pro rata calculation of Members' SLD obligations that may apply in certain circumstances; and (4) simplify and improve the transparency of the description of the calculation, collection and treatment of SLD in Rule 4(A) of the Rules, as described in greater detail below.[4]

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 enhance its management of the liquidity risks that arise in or are borne by it by calculating and collecting, when applicable, SLD on each Business Day rather than only in advance of Options Expiration Activity Periods. The proposed changes would establish an intraday SLD obligation that would apply in advance of Options Expiration Activity Periods and may be applicable on any Business Day, as needed. The proposal would also implement an alternative pro rata calculation of Members' SLD obligations that may apply in certain circumstances. Finally, in connection with these proposed changes, NSCC would simplify and improve the description of the calculation, collection and treatment of SLD in Rule 4(A). These proposed rule changes are described in greater detail below.

(i) Overview of the NSCC Liquidity Risk Management

NSCC, along with its affiliates, The Depository Trust Company and Fixed Income Clearing Corporation, maintains a Clearing Agency Liquidity Risk Management Framework (''Framework'') that sets forth the manner in which NSCC measures, monitors and manages the liquidity risks that arise in or are borne by it.[5] As a central counterparty, NSCC's liquidity needs are driven by the requirement to complete end-of-day money settlement, on an ongoing basis, in the event NSCC ceases to act for a Member (hereinafter referred to as a ''default'').[6] If a Member defaults, NSCC needs to complete settlement of guaranteed transactions on the defaulted Member's behalf from the date of default through the remainder of the settlement cycle. As such, and as provided for in the Framework, NSCC measures the sufficiency of its qualifying liquid resources through daily liquidity studies across a range of scenarios, including amounts NSCC would need in the event the Member or Member family with the largest aggregate liquidity exposure defaults.[7]

As described in the Framework, NSCC seeks to maintain qualifying liquid resources in an amount sufficient to cover this risk. These resources currently include (1) cash deposits to the NSCC Clearing Fund; [8] (2) the proceeds of the issuance and private

[47] 17 CFR 200.30–3(a)(57).

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

[2] 17 CFR 240.19b–4.

[3] NSCC filed this proposed rule change as an advance notice (File No. SR–NSCC–2021–801) 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] Capitalized terms not defined herein are defined in the Rules, *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[5] *See* Securities Exchange Act Release No. 82377 (December 21, 2017), 82 FR 61617 (December 28, 2017) (File Nos. SR–DTC–2017–004; SR–FICC–2017–008; SR–NSCC–2017–005).

[6] 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.

[7] ''Qualifying liquid resources'' are defined in Rule 17Ad–22(a)(14) under the Act. 17 CFR 240.17Ad–22(a)(14). The Framework also includes a definition of qualifying liquid resources that incorporates by reference Rule 17Ad–22(a)(14). *See supra* note 5.

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