

enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, are clear and transparent, establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities, and specify clear and direct lines of responsibility.<sup>16</sup> As stated above, the proposed rule change would update and formalize the Governance Playbook to reflect the governance arrangements in place at ICC, including those that specify: the Board's responsibility for the control and management of ICC's operations, the composition of the Board, the election procedures for new Managers, the fitness standards and qualifications required of each Manager and the Board as a whole, and the process to review the performance of ICC's senior managers. The Commission believes that these aspects of the proposed rule change should help ICC ensure that the Board and individual Managers, as well as ICC's senior managers, including the Chief Operating Officer, Chief Compliance Officer, Chief Risk Officer and General Counsel, have the appropriate experience and skills to discharge their duties and responsibilities. Further, the Commission believes the Governance Playbook specifies clear and direct lines of responsibility by identifying reporting lines of certain ICC officers to ensure they have sufficient access to the Board, consistent with relevant regulation. For these reasons, the Commission believes that the proposed rule change is consistent with Rule 17Ad-22(e)(2)<sup>17</sup> under the Act.

#### *C. Consistency With Rule 17Ad-22(e)(23)(i), (iv), and (v) Under the Act*

Rule 17Ad-22(e)(23)(i), (iv), and (v) under the Act requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for, among other things, (1) publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures, (2) a comprehensive public disclosure that describes its material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework, accurate in all material respects at the time of publication, and (3) updating the public disclosure every two years, or more frequently following changes to its system or the environment in which it operates to the extent necessary to

ensure statements previously provided remain accurate in all material respects.<sup>18</sup> As noted above, the Governance Playbook reflects updated arrangements by which all major decisions of the Board are clearly disclosed to clearing members, other relevant stakeholders, and ICC's regulators. In addition, the Governance Playbook provides governance procedures for clearly disclosing to the public the Board's major decisions that have a broad market impact. With respect to information made available to the public, the Governance Playbook specifies that ICC posts on its website all relevant rules and material procedures and documents, as required by applicable regulations. The Commission believes that these aspects of the Governance Playbook should help ensure that ICC publicly discloses all relevant rules and material procedures, including key aspects of its default rules and procedures.

In addition, the Governance Playbook specifies that ICC maintains a comprehensive public Disclosure Framework that describes its material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework. The Governance Playbook formalizes the process by which ICC Legal will update the public Disclosure Framework every two years or more frequently following material changes to ICC's systems or environment in which it operates, including updates for major decisions of the Board with a broad market impact. The Commission believes that these aspects of the Governance Playbook should help ensure ICC's compliance with its regulatory obligation to provide a comprehensive public disclosure that is updated every two years or more frequently following material changes.

For these reasons, the Commission believes that the proposed rule change is consistent with Rule 17Ad-22(e)(23)(i), (iv), and (v)<sup>19</sup> under the Act.

#### *D. Conclusion*

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act<sup>20</sup> and Rules 17Ad-22(e)(2) and (e)(23)(i), (iv), and (v) thereunder.<sup>21</sup>

<sup>18</sup> 17 CFR 240.17Ad-22(e)(23)(i), (iv), and (v).

<sup>19</sup> 17 CFR 240.17Ad-22(e)(23)(i), (iv) and (v).

<sup>20</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>21</sup> 17 CFR 240.17Ad-22(e)(2) and (e)(23)(i), (iv), and (v).

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act<sup>22</sup> that the proposed rule change (SR-ICC-2021-004), be, and hereby is, approved.<sup>23</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2021-06002 Filed 3-23-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91347; File No. SR-NSCC-2021-801]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Advance Notice To Amend the Supplemental Liquidity Deposit Requirements

March 18, 2021.

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 ("Clearing Supervision Act")<sup>1</sup> and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> notice is hereby given that on March 5, 2021, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the advance notice as described in Items I, II and III below, which Items have been prepared by the clearing agency.<sup>3</sup> The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice 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

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> NSCC filed this advance notice as a proposed rule change (File No. SR-NSCC-2021-002) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4. A copy of the proposed rule change is available at <http://www.dtcc.com/legal/sec-rule-filings.aspx>.

<sup>16</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>17</sup> 17 CFR 240.17Ad-22(e)(2).

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.<sup>4</sup>

## II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. 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 and B below, of the most significant aspects of such statements.

### (A) Clearing Agency's Statement on Comments on the Advance Notice 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.

### (B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

#### Description of Proposed Change

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.<sup>5</sup> 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").<sup>6</sup> 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.<sup>7</sup>

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;<sup>8</sup> (2) the proceeds of the issuance and private placement of (a) short-term, unsecured notes in the form of commercial paper and extendable notes ("Commercial Paper Program"),<sup>9</sup> and (b) term debt

("Term Debt Issuance");<sup>10</sup> (3) cash that would be obtained by drawing on NSCC's committed 364-day credit facility with a consortium of banks ("Line of Credit");<sup>11</sup> and (4) Supplemental Liquidity Deposits, collected pursuant to Rule 4(A), which are currently designed to cover the heightened liquidity exposure arising around Options Expiration Activity Periods, required from those Members whose activity would pose the largest liquidity exposure to NSCC.<sup>12</sup>

NSCC's liquidity risk management has evolved in order to adhere to regulatory requirements that were adopted after Rule 4(A) was implemented.<sup>13</sup> As part of its efforts to maintain compliance with these requirements, NSCC has continued to strengthen its liquidity risk management strategy, including through growing and diversifying its qualifying liquid resources. In connection with these ongoing efforts, NSCC is proposing to calculate and collect, when applicable, SLD every Business Day rather than only in connection with Options Expiration Activity Periods. This proposed change would improve NSCC's ability to measure and monitor its daily liquidity exposures and allow it to collect additional qualifying liquid resources from Members whose activity poses the largest liquidity exposure to NSCC in connection with their daily settlement activity, and not only during Options Expiration Activity Periods. By measuring SLD against Members' actual daily settlement activity and NSCC's available qualifying liquid resources, the proposal would also help mitigate risks to NSCC that it is unable to secure adequate default liquidity from other sources in an amount necessary to meet its liquidity needs. For example, the proposal would help mitigate the risks that could arise if investor demand for the short-term notes issued under the Commercial Paper Program weakens, there is limited investor demand for term debt issued pursuant to a Term Debt Issuance, or NSCC is unable to

<sup>5</sup> 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).

<sup>6</sup> 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.

<sup>7</sup> "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.

<sup>8</sup> See Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the Rules, *supra* note 4.

<sup>9</sup> See Securities Exchange Act Release Nos. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015)

(File No. SR-NSCC-2015-802); 82676 (February 9, 2018), 83 FR 6912 (February 15, 2018) (File No. SR-NSCC-2017-807).

<sup>10</sup> See Securities Exchange Act Release No. 88146 (February 7, 2020), 85 FR 8046 (February 12, 2020) (File No. SR-NSCC-2019-802).

<sup>11</sup> See Securities Exchange Act Release No. 80605 (May 5, 2017), 82 FR 21850 (May 10, 2017) (File Nos. SR-DTC-2017-802; SR-NSCC-2017-802).

<sup>12</sup> See Rule 4(A) (Supplemental Liquidity Deposits) of the Rules, *supra* note 4. See also Securities Exchange Act Release Nos. 70999 (December 5, 2013), 78 FR 75413 (December 11, 2013) (File No. SR-NSCC-2013-02); 71000 (December 5, 2013), 78 FR 75400 (December 11, 2013) (File No. SR-NSCC-2013-802).

<sup>13</sup> See 17 CFR 240.17Ad-22(e)(7). See also *supra* note 5.

<sup>4</sup> Capitalized terms not defined herein are defined in the Rules, available at [http://dtcc.com/~media/Files/Downloads/legal/rules/nscc\\_rules.pdf](http://dtcc.com/~media/Files/Downloads/legal/rules/nscc_rules.pdf).

renew its Line of Credit at the targeted amount.

NSCC is also proposing to establish an intraday SLD obligation that would apply on the first Business Day of the Options Expiration Activity Period to allow NSCC to continue to mitigate the additional liquidity exposures presented by options activity. The proposal would also permit NSCC to calculate and collect an intraday SLD on any Business Day when, for example, NSCC believes that it is necessary to collect an additional SLD from a Member whose activity presents relatively greater risks to the NSCC on an overnight basis.

NSCC is also proposing to implement an alternative calculation of Members' SLD requirements that would be their pro rata allocation of the largest SLD obligation calculated for that Business Day. This proposed change would provide NSCC with the discretion, in certain circumstances, to allocate its largest liquidity need on a Business Day among those Members that are required to pay SLD on that day rather than collect separate SLD from those Members, as described in greater detail below.

In connection with these proposed changes, NSCC would also simplify the description of the calculation of SLD in Rule 4(A) in order to improve the transparency of this Rule, as described in greater detail below.

#### (ii) Current Rule 4(A) and Supplemental Liquidity Deposits

Under the current Rule 4(A), NSCC collects SLD from the unaffiliated Members and families of affiliated Members (each defined as an "Affiliated Family") that incur the largest gross settlement debits over the settlement cycle during times of increased trading activity that arise around Options Expiration Activity Periods.<sup>14</sup>

Under the current Rule 4(A), NSCC performs calculations on a monthly basis, no later than the fifth day prior to an Options Expiration Activity Period, using activity observed over a 24-month lookback period (defined in the current Rule 4(A) as the "Special Activity Lookback Period").<sup>15</sup> These calculations determine (1) NSCC's largest liquidity need that exceeded its liquidity resources (defined in Rule 4(A) as "Special Activity Peak Liquidity Need"); and (2) the 30 (or fewer) unaffiliated Members or Affiliated Families (defined in Rule 4(A) as "Special Activity Liquidity Providers") that presented the largest liquidity

exposures to NSCC (defined in Rule 4(A) as "Special Activity Peak Liquidity Exposures").<sup>16</sup> To determine the SLD obligations of each Special Activity Liquidity Provider, the calculated Special Activity Peak Liquidity Need of NSCC is allocated to these Special Activity Liquidity Providers in proportion to the Special Activity Peak Liquidity Exposures they presented to NSCC during the Special Activity Lookback Period. Special Activity Liquidity Providers are required to fund their SLD obligations by the close of business on the second day prior to the applicable Options Expiration Activity Period.<sup>17</sup> SLD may be returned to Special Activity Liquidity Providers seven Business Days after the end of the applicable Options Expiration Activity Period.<sup>18</sup>

On any Business Day between calculation dates, if NSCC observes an increase in its liquidity needs that exceeds a predetermined threshold amount, it may call for an additional deposit from the Member whose increase in activity levels caused (or was the primary cause of) such increased liquidity need (defined in Rule 4(A) as "Special Activity Liquidity Call").<sup>19</sup> NSCC may hold deposits made pursuant to a Special Activity Liquidity Call for up to 90 days after the deposit is made.<sup>20</sup> Members are also permitted to submit a cash deposit to the Clearing Fund as a "Special Activity Prefund Deposit" no later than the first Business Day of an Options Expiration Activity Period.<sup>21</sup> NSCC understands that a Member would generally make a Special Activity Prefund Deposit when it anticipates that its Special Activity Peak Liquidity Exposure during that period may be greater than the amount calculated by NSCC pursuant to Rule 4(A) based on activity in the Special Activity Lookback Period.<sup>22</sup>

The current Rule 4(A) also addresses how SLD are treated generally.<sup>23</sup> Specifically, while SLD are part of a Member's actual deposit to the Clearing Fund, they are made in addition to a Member's Required Fund Deposit and

any other deposit of any such Member to the Clearing Fund.<sup>24</sup> Rule 4(A) also provides that SLD may be invested and may be used to satisfy a loss or liability as provided for in Sections 3 or 13 of Rule 4, and addresses NSCC's obligation to provide Members with certain information that would help them anticipate their potential SLD requirements.<sup>25</sup>

#### (iii) Amended Rule 4(A) and Proposed Daily Calculation of Supplemental Liquidity Deposits

In order to better address the liquidity risks presented by Members' daily activity, NSCC is proposing to amend Rule 4(A) to calculate and collect, when applicable, SLD every Business Day rather than only in connection with the monthly expiration of stock options. While the monthly expiration of stock options does present larger liquidity exposures to NSCC, NSCC may also face large liquidity exposures from Members' daily activity, particularly during volatile market conditions. By allowing NSCC to calculate and collect SLD daily, NSCC would be able to identify these exposures based on Members' daily activity rather than estimate its upcoming liquidity exposures based on activity observed over a lookback period. The proposal would help NSCC mitigate its liquidity risks through the daily collection of SLD from those Members' whose daily activity would, in the event of the Member's default, create a potential liquidity need that is in excess of NSCC's available qualifying liquid resources. The proposal would also permit NSCC to return SLD to Members on the Business Day following the day those deposits are collected and would remove the current requirement that SLD be held for up to 90 days.

In order to implement this proposed change to the timing of the SLD, NSCC would make a number of changes to Rule 4(A), described below. The proposed changes to Rule 4(A) would implement a daily calculation and collection of SLD, simplify and clarify the calculations done in connection with the SLD requirements, and enhance the disclosures of the SLD requirements. Despite these proposed changes, the structure of Rule 4(A) and the fundamental mechanics of the SLD requirements would be unchanged.

<sup>14</sup> See Section 2 of Rule 4(A) (Supplemental Liquidity Deposits) of the Rules, *supra* note 4.

<sup>15</sup> See *id.*

<sup>16</sup> See Section 3 of Rule 4(A) (Supplemental Liquidity Deposits) of the Rules, *id.*

<sup>17</sup> See Section 4 of Rule 4(A) (Supplemental Liquidity Deposits) of the Rules, *id.*

<sup>18</sup> See Section 9 of Rule 4(A) (Supplemental Liquidity Deposits) of the Rules, *id.*

<sup>19</sup> See Section 7 of Rule 4(A) (Supplemental Liquidity Deposits) of the Rules, *id.*

<sup>20</sup> See Section 10 of Rule 4(A) (Supplemental Liquidity Deposits) of the Rules, *id.*

<sup>21</sup> See definition of "Special Activity Prefund Deposit" in Section 2 of Rule 4(A) (Supplemental Liquidity Deposits) of the Rules, *id.*

<sup>22</sup> See *id.*

<sup>23</sup> See Section 13 of Rule 4(A) (Supplemental Liquidity Deposits) of the Rules, *id.*

<sup>24</sup> See Section 13(b) of Rule 4(A) (Supplemental Liquidity Deposits) of the Rules, *id.*

<sup>25</sup> See Section 13(c) and Section 14 of Rule 4(A) (Supplemental Liquidity Deposits) of the Rules, *id.*

## Proposed Daily Calculation of Supplemental Liquidity Deposits

**Supplemental Liquidity Providers.** Under the proposed Rule 4(A), each Business Day NSCC would determine the 30 (or fewer) Members (each such Member a “Supplemental Liquidity Provider”) that had the “Peak Liquidity Need,” which would be defined as the largest Daily Liquidity Need that NSCC would have for that Member or Affiliated Family in a “Lookback Period.”<sup>26</sup> For purposes of this calculation, Daily Liquidity Need would be defined as the amount of liquid resources needed to effect the settlement of NSCC’s payment obligations as a central counterparty over a three day settlement cycle, assuming the default of that Member on that day.

As described above, Supplemental Liquidity Providers are currently identified by reviewing Members’ Special Activity Peak Liquidity Exposures over the Lookback Period. Under the proposed approach, NSCC would base this determination on Members’ Peak Liquidity Need, which would continue to identify those Members whose activity posed the largest liquidity risks to NSCC during the Lookback Period. The proposed approach would no longer require a calculation using NSCC’s available liquid resources on each day in the Lookback Period but would use a simpler approach by looking only at liquidity need. The proposed approach to use a simpler calculation would reduce the risk of error and would clarify the description of how NSCC would identify Supplemental Liquidity Providers in the proposed Rule 4(A), making it more predictable to Members.

**Supplemental Liquidity Obligation.** After NSCC determines the Supplemental Liquidity Providers, NSCC would then determine if any of the Supplemental Liquidity Providers would be required to pay an SLD on that Business Day. The proposed Rule 4(A) would use a simplified calculation by determining if the Daily Liquidity Need for each Supplemental Liquidity Provider on that Business Day exceeds the sum of NSCC’s qualifying liquid resources available to NSCC on that day, assuming stressed market conditions (described below) (defined in the proposed Rule 4(A) as “Qualifying

Liquid Resources”). The result of that calculation would be a Supplemental Liquidity Provider’s SLD requirement (defined in the proposed Rule 4(A) as a “Supplemental Liquidity Obligation”) for that day. If the Daily Liquidity Need of a Supplemental Liquidity Provider does not exceed NSCC’s Qualifying Liquid Resources on that day, then it would not have a Supplemental Liquidity Obligation.

Because this calculation would be done at the start of each Business Day (as discussed further below), it would be based on the Qualifying Liquid Resources, including Required Fund Deposits to the Clearing Fund, available to NSCC as of the end of the prior Business Day. Additionally, in order to anticipate market conditions that could cause Qualifying Liquid Resources to be unavailable on that day, NSCC would apply stress scenarios in determining its total Qualifying Liquid Resources for purposes of Rule 4(A). Currently, NSCC applies stress scenarios in determining the Special Activity Daily Liquidity Need and, in practice, they are currently applied to the Other Qualifying Liquid Resources in this calculation under the current Rule 4(A).<sup>27</sup> The proposed change would allow NSCC to continue to assume stressed markets in its SLD calculations, which protects it against unexpected market events.<sup>28</sup> The proposed changes to Rule 4(A) would make it clearer how these stress scenarios are applied.

Under this proposed calculation, NSCC would no longer need to estimate the potential liquidity need a Member’s activity could pose to NSCC based on activity that settled in the Lookback Period. Instead, the Supplemental Liquidity Obligation of a Member would be calculated based on the actual liquidity exposure that its daily activity would pose to NSCC on that particular day in the event of that Member’s default. The proposed change provides both NSCC and Members with a more reliable measure of the liquidity risks posed to NSCC by its Members’ daily settlement activity in calculating SLD requirements.

<sup>27</sup> Current Rule 4(A) uses the defined term “Other Qualifying Liquid Resources” to refer to NSCC’s qualifying liquid resources other than the Clearing Fund and the Line of Credit. See Section 2 of Rule 4(A) (Supplemental Liquidity Deposits) of the Rules, *id.*

<sup>28</sup> NSCC would apply the same stress scenarios that it currently applies, which include the market shocks of 1987, and removing the largest commitment to the Line of Credit, excess deposits to the Clearing Fund on deposit and proceeds from issued commercial paper that is maturing within five Business Days from NSCC’s Qualifying Liquid Resource. Any changes to these stress scenarios would be announced by an Important Notice posted to NSCC’s website.

Each Supplemental Liquidity Provider that has a Supplemental Liquidity Obligation on a Business Day would receive a notice from NSCC of the amount of its Supplemental Liquidity Obligation and would be required to make a deposit in that amount to the Clearing Fund within one hour of such notice. The proposed timing of funding a Supplemental Liquidity Obligation would mirror the current requirement that is applied to Members’ Required Fund Deposits, which is also calculated and collected daily, and must be funded within one hour of demand.<sup>29</sup> Specifically, NSCC expects to deliver notification of Supplemental Liquidity Obligations to Supplemental Liquidity Providers by around 8:30 a.m. ET each Business Day, with deposits required by no later than 9:30 a.m. ET.

**Proposed Pro Rata Calculation of Supplemental Liquidity Obligations.** As an alternative to the calculation of Supplemental Liquidity Obligations described above, proposed Rule 4(A) would also state that, in the event two or more Supplemental Liquidity Providers have a Supplemental Liquidity Obligation of more than \$2 billion on a Business Day, calculated pursuant to the calculation described above, NSCC may determine the Supplemental Liquidity Obligation of all Supplemental Liquidity Providers on that day would be their pro rata share of the largest Supplemental Liquidity Obligation calculated on that Business Day.<sup>30</sup>

This proposed alternative calculation of the Supplemental Liquidity Obligations would provide NSCC with the option of collecting only the largest SLD calculated on a Business Day, allocated among each of the Supplemental Liquidity Providers. The purpose of this proposed provision is to provide NSCC with the option of collecting enough funds to meet its regulatory requirements in circumstances when the aggregate

<sup>29</sup> See Section II(B) of Procedure XV (Clearing Fund Formula and Other Matters) of the Rules, *supra* note 4.

<sup>30</sup> As an example, the Supplemental Liquidity Obligations for three Supplemental Liquidity Providers on a Business Day are—Member A: \$6 billion, Member B: \$2 billion and Member C: \$1 billion. If NSCC determines, in its sole discretion, to calculate their Supplemental Liquidity Obligations on a pro-rata basis, then their Supplemental Liquidity Obligations would be—Member A: \$4 billion (or 2/3 of the largest Supplemental Liquidity Obligation of \$6 billion), Member B: \$1.3 billion (or 1/3 of the \$6 billion) and Member C: \$700 million (or 1/10 of the \$6 billion). The notice provided to each Supplemental Liquidity Provider on that Business Day would inform those Members that this pro-rata calculation was applied.

<sup>26</sup> The “Lookback Period” would continue to be defined as 24 months, or a longer period as determined by NSCC in its discretion. NSCC may adjust the Lookback Period if, for example, unusual activity observed in the Lookback Period is not an appropriate indicator of future settlement activity and causes a Member to be a Supplemental Liquidity Provider. See Section 2 (Defined Terms) of Rule 4(A), *id.*

Supplemental Liquidity Obligations on a particular day would significantly exceed that amount. Therefore, NSCC has structured this provision to be available only if two or more Supplemental Liquidity Providers owe SLD of more than \$2 billion. NSCC has never had two more Supplemental Liquidity Providers owe more than \$2 billion in SLD on a calculation date since Rule 4(A) was adopted. Therefore, NSCC believes this alternative calculation would only be available in very limited circumstances. Furthermore, NSCC believes the threshold of \$2 billion is appropriate as it would only permit this alternative calculation in circumstances when it would have a material impact on the allocation of Supplemental Liquidity Obligations among the Supplemental Liquidity Providers.

In such circumstances, when multiple Members have relatively large Supplemental Liquidity Obligations of more than \$2 billion, NSCC would have the option to determine if it is appropriate to collect the largest SLD calculated for that Business Day, divided pro rata among the Supplemental Liquidity Providers rather than collect the each of the Supplemental Liquidity Obligations of those firms. NSCC may determine, for example, that, in certain market conditions, this approach would be appropriate to alleviate liquidity pressures on Supplemental Liquidity Providers. This alternative calculation would allow NSCC to collect sufficient qualifying liquid resources to meet its regulatory obligations with respect to liquidity risk management without requiring all of the Supplemental Liquidity Providers to fund the total amount of their calculated Supplemental Liquidity Obligation on that Business Day.<sup>31</sup>

**Intraday Supplemental Liquidity Calls.** The proposed Rule 4(A) would also establish Intraday Supplemental Liquidity Calls that would replace the current Special Activity Liquidity Calls. The existing Special Activity Liquidity Calls are designed to address increases in NSCC's liquidity need between calculation dates. The proposed Intraday Supplemental Liquidity Calls would serve a similar function, allowing NSCC to calculate and collect additional

SLD on an intraday basis if a Supplemental Liquidity Provider's increased activity levels or projected settlement activity causes NSCC's Daily Liquidity Need to exceed NSCC's Qualifying Liquid Resources. This proposed provision would assist NSCC in mitigating increased liquidity exposures in specified circumstances.

First, proposed Rule 4(A) would establish a monthly Intraday Supplemental Liquidity Call that is calculated and collected, when applicable, on the first Business Day of an Options Expiration Activity Period, which is typically a Friday.<sup>32</sup> This Intraday Supplemental Liquidity Call would be calculated as the difference between (1) NSCC's Daily Liquidity Need, recalculated to account for both actual settlement activity submitted to NSCC over the course of Business Day and projected activity in stock options that is expected to be submitted to NSCC<sup>33</sup> and (2) NSCC's Qualifying Liquid Resources. Settlement activity may net with (and offset) the activity that NSCC uses in re-calculating the Daily Liquidity Need. In order to account for any potential offsetting settling activity, NSCC would adjust the re-calculated Daily Liquidity Need using an estimated netting percentage that is based on each Supplemental Liquidity Provider's average percentage of netting observed over the prior 24 months. Under this proposed provision, NSCC would adjust the amount of SLD it collects in order to mitigate the increased liquidity exposures related to the monthly expiration of stock options.

Second, proposed Rule 4(A) would allow NSCC to call for additional SLD on an intraday basis on any Business Day if a Supplemental Liquidity Provider's increased activity levels causes NSCC's Daily Liquidity Need to exceed NSCC's Qualifying Liquid Resources and NSCC determines, in its sole discretion, that it is appropriate to require an additional intraday SLD from that Supplemental Liquidity Provider in order to mitigate those additional liquidity exposures. Under this proposed change, NSCC would have the

ability to make an Intraday Supplemental Liquidity Call on any Business Day. The amount of an Intraday Supplemental Liquidity Call would be the difference between NSCC's Daily Liquidity Need, recalculated for that Business Day taking into account any increase in settlement activity, and NSCC's Qualifying Liquid Resources. This proposed provision would allow NSCC to adjust the amount of SLD it collects for a Business Day in circumstances when NSCC believes it is necessary to accelerate the collection of additional SLD from Supplemental Liquidity Providers whose activity may present relatively greater risks to the NSCC on an overnight basis. NSCC would determine if an Intraday Supplemental Liquidity Call is appropriate based on a variety of factors and circumstances, including, but not limited to, an assessment of a Supplemental Liquidity Provider's ability to meet its projected settlement or Supplemental Liquidity Obligations and estimates of settlement activity that could offset settlement exposures and are not reflected in NSCC's liquidity estimates.

**Returns of SLD and Miscellaneous Matters.** Proposed Rule 4(A) would provide that NSCC would return SLD, including any SLD funded pursuant to an Intraday Supplemental Liquidity Call, on the next Business Day unless such amounts are held longer by NSCC pursuant to proposed Section 12a of Rule 4(A), as described below. Under the current Rule 4(A), NSCC may hold SLD for up to seven Business Days after the end of the applicable Options Expiration Activity Period and may hold SLD funded pursuant to a Special Activity Liquidity Call for up to 90 days after such deposit is made. Under the proposed change, because NSCC would recalculate the Supplemental Liquidity Obligations each Business Day, NSCC would no longer need to hold SLD for these extended periods.

NSCC would amend proposed Section 12a (currently Section 13a) of Rule 4(A) to clarify that SLD, as part of Members' actual deposit to the Clearing Fund, would be subject to the provision of Section 9 of Rule 4. Section 9 of Rule 4 addresses NSCC's right to withhold all or any part of any excess deposit of a Member if such Member has been placed on the Watch List pursuant to the Rules or if NSCC determines that the Member's anticipated activities in NSCC in the near future may reasonably be expected to be materially different than its activities of the recent past.<sup>34</sup> Current

<sup>31</sup> Rule 17Ad-22(e)(7)(i) under the Act requires, in part, that NSCC maintain sufficient liquid resources at the minimum to effect same-day settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios, including the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions. 17 CFR 240.17Ad-22(e)(7)(i).

<sup>32</sup> The proposed Rule 4(A) will retain the existing definition of an Options Expiration Activity Period for purposes of this monthly Intraday Supplemental Liquidity Call.

<sup>33</sup> Each Business Day, NSCC receives information regarding projected settlement activity from The Options Clearing Corporation pursuant to a Stock and Futures Settlement Agreement ("OCC Accord"). The OCC Accord provides for the clearance and settlement of exercises and assignments of options on eligible securities or the maturity of eligible stock futures contracts through NSCC. See Securities Exchange Act Release No. 81260 (July 31, 2017), 82 FR 36484 (August 4, 2017) (File Nos. SR-NSCC-2017-803; SR-OCC-2017-804).

<sup>34</sup> For example, this may occur when an index rebalancing occurs shortly after a month-end

Section 13a of Rule 4(A) addresses how SLD are treated pursuant to other Rules, particularly Rule 4, which addresses Members' deposits to the Clearing Fund. While this proposal would not change NSCC's rights with respect to these funds, it would provide Members with greater transparency into how SLD are treated under Rule 4.

NSCC would also amend the provision in Rule 4(A) that addresses when SLD would be returned to a Member that ceases to be a participant. Currently, Rule 4(A) states that SLD are not subject to Section 7 of Rule 4 (which addresses how Required Fund Deposits are returned to retired Members) and, as such, are returned to retired Members as otherwise provided for in Rule 4(A).<sup>35</sup> Under the proposed Rule 4(A), because NSCC would be able to calculate SLD each Business Day, it would return SLD on the Business Day following the calculation date. However, while a firm may still have unsettled activity on the day it retires, NSCC would not be able to collect SLD on the days following a Member's retirement. Therefore, NSCC is proposing to amend Rule 4(A) to require that SLD of a retired Member be treated similarly to other cash Required Fund Deposits to the Clearing Fund and be held by NSCC for 30 calendar days after any of its open transactions have settled and obligations have been satisfied. This proposed change would protect NSCC from liquidity risks presented by open transactions in the days following a firm's retirement and would align the treatment of these funds with the treatment of Required Fund Deposits of retired Members.

The proposed Rule 4(A) would also simplify the additional miscellaneous provisions applicable to SLD, which address, for example, NSCC's right to debit Members' accounts at NSCC if a Supplemental Liquidity Provider fails to meet its Supplemental Liquidity Obligation, and the information NSCC makes available to Supplemental Liquidity Providers each Business Day regarding SLD calculations. While the proposed changes would update and simplify these provisions, they would not significantly alter the structure of these provisions, as described below.

#### Proposed Changes to Rule 4(A)

The proposal described above would be implemented into the Rules by

options expiration period, which could cause an increase in NSCC's liquidity exposures.

<sup>35</sup> Section 7 of Rule 4 provides that Required Fund Deposits to the Clearing Fund in the form of cash and securities are returned to retired Members within 30 calendar days after all of its transactions have settled and obligations have been satisfied. See *supra* note 4.

amending the current Rule 4(A). The specific changes to implement the proposal are described below.

*Section 1 (Overview).* NSCC is proposing changes to Section 1 of Rule 4(A) to simplify the descriptions by removing outdated and unnecessary language. Section 1 of Rule 4(A) would continue to provide the rationale for the SLD requirement, by describing NSCC's liquidity needs and how the SLD requirements are designed to contribute to meeting those needs. However, the proposed changes would simplify this section by removing a statement that specifically identifies two of NSCC's principal sources of liquidity and would instead more generally refer to NSCC's sources of liquidity. The proposed changes to Section 1 of Rule 4(A) would also remove references to options expiration activity periods, which would no longer be applicable to the SLD requirement under this proposal.

*Section 2 (Defined Terms).* NSCC is proposing several changes to Section 2 of Rule 4(A) in order to implement this proposal. As described below, the proposed changes to the defined terms address the change in timing of the SLD requirement to occur each Business Day and would improve the transparency of Rule 4(A) through simplified and clearer defined terms.

First, Section 2 of proposed Rule 4(A) would remove the definition of "Special Activity Calculation Date," which is tied to the monthly Options Expiration Activity Period, and instead would use the term "Business Day" throughout proposed Rule 4(A), where appropriate. Business Day is currently defined in Rule 1 as any day on which NSCC is open for business. Therefore, this proposed change would provide for the calculation of SLD requirements on each day that NSCC is open for business.

Second, Section 2 of the proposed Rule 4(A) revise other defined terms that use the phrase "Special Activity" to either remove that phrase or, when appropriate, to replace this phrase with the term "Supplemental." For example, NSCC would revise the defined term "Special Activity Daily Liquidity Need" to "Daily Liquidity Need," and would revise the defined term "Special Activity Liquidity Provider" to "Supplemental Liquidity Provider." The phrase "Special Activity" was used in the current Rule 4(A) to refer to the Options Expiration Activity Period, which would only be applicable to the monthly intraday SLD in the proposed Rule 4(A).

NSCC would also update the definition of Daily Liquidity Need to change a reference from a four-day settlement cycle to a three-day

settlement cycle, to reflect the amendment to Rule 15c6-1(a) under the Act to shorten the standard settlement cycle for most broker-dealer transactions.<sup>36</sup> Additionally, NSCC would move the defined term for "Options Expiration Activity Period" within Section 2 of the proposed Rule 4(A) so it continues to appear alphabetically, but is not proposing to change the definition of this term.

Third, the proposed changes to Section 2 of Rule 4(A) would include one defined term for "Qualifying Liquid Resources" to refer to all default liquidity resources available to NSCC to settle its payment obligations as a central counterparty. As discussed in greater detail above, the defined term would provide that NSCC may apply stressed market assumptions to its Qualifying Liquid Resources when applying these resources in the calculations made under Rule 4(A). In connection with this proposed change, NSCC would remove the defined terms "Commitment" and "Credit Facility," which were used in the current Rule 4(A) to refer to NSCC's Line of Credit, and would remove "Other Qualifying Liquid Resources," which was used to refer to NSCC's liquid resources other than the Clearing Fund and the Line of Credit. This proposed change would simplify Rule 4(A) and would account for NSCC's continuing efforts to expand and diversify its default liquidity resources. The proposed change would also clarify that Qualifying Liquid Resources would not include SLD for purposes of the calculations in Rule 4(A).

Fourth, the proposed changes would move certain calculations out of the defined terms in Section 2 and include them in the relevant later sections of Rule 4(A). This proposed change would simplify and clarify Rule 4(A), which currently requires a reader to refer back to the defined terms in Section 2 when reading the calculations and requirements set forth in later sections of Rule 4(A). For example, Section 2 of Rule 4(A) currently includes the calculation of "Special Activity Peak Liquidity Exposure" and "Special Activity Peak Liquidity Need." In the proposed Rule 4(A), NSCC would no longer use the calculation of Special Activity Peak Liquidity Exposure in determining the Supplemental Liquidity Providers or in calculating those requirements. The calculation of Peak Liquidity Need, which would replace Special Activity Peak Liquidity Need, would be moved out of Section 2 and into Section 3, where that calculation

<sup>36</sup> See 17 CFR 240.15c6-1.

would be described as being used to identify Supplemental Liquidity Providers.

Finally, the proposed changes to Section 2 of Rule 4(A) would remove defined terms that are no longer needed when NSCC calculates SLD requirements daily. For example, NSCC would remove defined terms that are related to the Options Expiration Activity Period, including “Special Activity Business Day,” which is currently defined as a Business Day included in an Options Expiration Activity Period. NSCC would also remove the defined term for “Special Activity Prefund Deposit” because it would no longer be necessary for Members to prefund their potential SLD requirement in advance of NSCC’s calculations when they are done on a daily basis.

*Section 3 (Supplemental Liquidity Providers).* NSCC is proposing to amend Section 3 to describe how NSCC would identify the Supplemental Liquidity Providers for each Business Day. Section 3 of the proposed Rule 4(A) would state that, each Business Day, NSCC would determine the Peak Liquidity Need of each Member during the Lookback Period, and would identify the Supplemental Liquidity Providers for that Business Day as the 30 (or fewer) Members with the largest Peak Liquidity Need in that time period. These changes would implement the proposal described in greater detail above to make this calculation daily and to simplify the calculation used to identify Supplemental Liquidity Providers by using Peak Liquidity Need rather than using the largest exposures of all providers in the Lookback Period.

*Section 4 (Supplemental Liquidity Obligations); Section 5 (Satisfaction of Supplemental Liquidity Obligations); and Section 6 (Notice of Supplemental Liquidity Obligations and Payment of Supplemental Liquidity Deposits).* NSCC would amend Sections 4, 5 and 6 of Rule 4(A) to describe the simplified calculation of Supplemental Liquidity Obligations, and the process by which Supplemental Liquidity Providers would pay their Supplemental Liquidity Obligations after being notified by NSCC. Proposed changes to Section 4 would implement the revised calculation of Supplemental Liquidity Obligations, described in greater detail above, as the difference between a Supplemental Liquidity Provider’s Daily Liquidity Need for that Business Day and the Qualifying Liquid Resources available to NSCC on that day. The proposed changes would also create a subsection b. of Section 4 to describe the optional, alternative pro rata

calculation of Supplemental Liquidity Obligations, as described in greater detail above.

Proposed changes to Sections 5 and 6 of Rule 4(A) would update the defined terms and the timing by when Supplemental Liquidity Providers must fund their Supplemental Liquidity Obligations to reflect the change of these obligations to daily. Proposed changes to Section 6 of Rule 4(A) would state that the notice provided to Supplemental Liquidity Providers regarding their Supplemental Liquidity Obligations would state if that amount was calculated pursuant to Section 4b as a pro rata share of the largest Supplemental Liquidity Obligation of that Business Day.

*Section 7 (Determination of Intraday Supplemental Liquidity Calls) and Section 8 (Satisfaction of Intraday Supplemental Liquidity Calls).* NSCC would amend Sections 7 and 8 of Rule 4(A) to reflect the removal of the Special Activity Liquidity Calls and the adoption of the two Intraday Supplemental Liquidity Calls, as described in greater detail above. The proposed changes to these sections would also update defined terms, as appropriate.

*Returns of Supplemental Liquidity Deposits—Section 9 (Deposits Made in Satisfaction of a Supplemental Liquidity Obligation) and Section 10 (Ceasing to be a Participant).* NSCC is proposing to consolidate the current Sections 9 and 10 of Rule 4(A) into a new Section 9 of Rule 4(A), which would address the return of SLD that are made in satisfaction of both Supplemental Liquidity Obligations and Intraday Supplemental Liquidity Calls. The proposed changes would provide that SLD made pursuant to either Supplemental Liquidity Obligations and Intraday Supplemental Liquidity Calls would be returned to Supplemental Liquidity Providers on the next Business Day after the calculation date, unless otherwise notified by NSCC.

NSCC would amend Section 10 (currently Section 11) to align the treatment of SLD of a retired Member with the treatment of such firm’s Required Fund Deposits, as described in greater detail above.

*Miscellaneous Matters—Section 11 (Obligations of Affiliated Families and Supplemental Liquidity Providers), Section 12 (Application of Supplemental Liquidity Deposits) and Section 13 (Information).* NSCC would amend Sections 11, 12 and 13 (currently Sections 12, 13 and 14) of Rule 4(A) to update and simplify these provisions. The proposed amendments would not

substantially amend the purpose or application of these sections.

Section 11 (currently Section 12) of Rule 4(A) provides that the Supplemental Liquidity Obligations of Affiliated Families are the several obligations of all of the Members of the Affiliated Family ratably in proportion to their applicable Special Activity Peak Liquidity Exposure. NSCC would not change this provision but would update it to use revised defined terms. NSCC would also amend Section 11 by consolidating two parallel paragraphs into subsection b., which address NSCC’s right to collect SLD from Supplemental Liquidity Providers. This proposed change would simplify the provision but would not make substantive changes to NSCC’s rights or Members’ obligations.

Section 12 (currently Section 13), which addresses how SLD are treated under Rule 4, would be amended to update defined terms and to clarify that SLD may be held by NSCC as part of Members’ actual deposits to the Clearing Fund, pursuant to Section 9 of Rule 4. No substantive changes are proposed to this Section.

Section 13 (currently Section 14) describes NSCC’s obligation to provide Members with certain information regarding its SLD calculation. NSCC is proposing to amend this section to include updated defined terms and to reflect the daily calculation of SLD.

#### (iv) Impact Study Results

NSCC has provided the Commission with the results of an impact study that reviewed the proposal against the observed regulatory liquidity needs and NSCC’s Qualifying Liquid Resources available during the period from 2016 through 2020 to assess both pro-forma and hypothetical impacts of the proposal under various liquidity scenarios.

*Pro-Forma Impact Study.* The pro-forma impact study compared NSCC’s regulatory liquidity needs against the Qualifying Liquid Resources that were available between 2016 and 2020. The pro-forma analysis indicated that NSCC would expect between 1 and 3 Supplemental Liquidity Obligations per year, ranging in size between \$1.0 billion to \$5.4 billion in 2016 through 2019. In calendar year 2020, the impact study shows that available Qualifying Liquid Resources for each date would have eliminated potential Supplemental Liquidity Obligations.

Additionally, this impact study showed between 4 and 27 actual Supplemental Liquidity Obligations were received by NSCC per year, typically averaging \$3.6 billion during

this same period, including 9 actual Supplemental Liquidity Obligations received by NSCC in 2020.

*Hypothetical Impact Study.* NSCC also developed several hypothetical liquidity scenarios to assess the proposal's impact. When hypothetical Qualifying Liquid Resources available to NSCC are between \$17 billion and \$22 billion, NSCC would expect between 7 and 36 Supplemental Liquidity Obligations per year, ranging in size between \$2.1 billion to \$4.6 billion each; and (2) when the hypothetical Qualifying Liquid Resources available to NSCC are \$22 billion or above, NSCC would expect between 1 and 5 Supplemental Liquidity Obligations per year, ranging in size between \$2.1 billion to \$6.8 billion each.

NSCC has also provided the Commission with details of potential impacts of the proposal on the largest 50 Affiliated Families, a list of the 30 Affiliated Families with the largest liquidity exposures as of December 31, 2020, and the respective Affiliated Families' maximum and average NSCC liquidity needs for each calendar year between 2016 and 2020.

#### (v) Implementation Timeframe

NSCC would implement the proposed changes no later than 10 Business Days after the later of the no objection to the advance notice and approval of the related proposed rule change<sup>37</sup> by the Commission. NSCC would announce the effective date of the proposed changes by Important Notice posted to its website.

#### Anticipated Effect on and Management of Risk

NSCC believes that the proposed changes to calculate and collect, when applicable, SLD on both a daily basis and, in some cases, on an intraday basis, and the proposed changes to implement an alternative pro rata calculation of Members' SLD obligations in certain circumstances, as described above, would enable NSCC to better limit its liquidity exposures to Members' daily settlement activity.

The proposed changes to calculate and collect, when applicable, SLD on a daily basis would improve NSCC's ability to estimate its liquidity exposures in the calculation and collection of SLD by using daily activity, rather than estimating potential exposures based on activity in a look-back period. In this way, the proposed change would improve NSCC's liquidity risk management by supplementing its liquidity resources that are available to

it to complete end-of-day settlement in the event of the default of a Member. The proposed intraday SLD would allow NSCC to re-calculate its liquidity exposures and collect sufficient liquidity to allow it to complete end-of-day settlement in the event of the default of a Member. The proposed pro rata alternative calculation of SLD would allow NSCC to opt to collect only the largest Supplemental Liquidity Obligation calculated for that Business Day, while still meeting NSCC's applicable regulatory obligations.

By providing NSCC with a more effective measurement of its liquidity exposures, the proposed changes 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.

#### Consistency With the Clearing Supervision Act

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.<sup>38</sup>

NSCC believes that the proposal is consistent with the Clearing Supervision Act, specifically with the risk management objectives and principles of Section 805(b), and with certain of the risk management standards adopted by the Commission pursuant to Section 805(a)(2), for the reasons described below.<sup>39</sup>

#### (i) Consistency With Section 805(b) of the Clearing Supervision Act

NSCC believes the proposal is consistent with the objectives and principles of the risk management standards described in Section 805(b) of the Clearing Supervision Act.<sup>40</sup> The proposal would allow NSCC to calculate and collect, when applicable, SLD on a daily basis and would implement an alternative pro rata calculation of Members' SLD obligations in certain circumstances, as described above. By using daily activity in these calculations, the proposed change would improve NSCC's ability to estimate its liquidity exposures in the

calculation and collection of SLD and, therefore, would improve NSCC's management of the liquidity risks posed to it by its Members' daily settlement activity. Additionally, the proposal would establish a monthly intraday SLD collection in connection with options expiration activity that present heightened liquidity exposures, and an optional intraday SLD that NSCC may collect when it deems appropriate to mitigate any increased liquidity exposures or in light of other circumstances. These proposed intraday SLD would allow NSCC to re-calculate its liquidity exposures and collect sufficient liquidity to allow it to complete end-of-day settlement in the event of the default of a Member. Further, the proposed pro rata alternative calculation of SLD would allow NSCC to opt to collect only the largest Supplemental Liquidity Obligation calculated for that Business Day, while still meeting NSCC's applicable regulatory obligations.

The proposal would strengthen NSCC's ability to maintain sufficient liquidity to complete end-of-day settlement in the event of the default of a Member by allowing NSCC to collect SLD each Business Day from those Members that pose the largest liquidity exposures to NSCC on that day. Therefore, because the proposed changes are designed to enable NSCC to better limit the liquidity exposures it would face in the event of a Member default, NSCC believes the proposal promotes robust risk management.

As a result, NSCC believes the proposal is consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act,<sup>41</sup> which specifies the promotion of robust risk management, promotion of safety and soundness, reduction of systemic risks, and support of the stability of the broader financial system by, among other things, strengthening the liquidity of systemically important financial market utilities, such as NSCC.

#### (ii) Consistency With Rules 17Ad-22(e)(7)(i) and (ii) Under the Act

NSCC believes the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes the proposed changes are consistent with Rules 17Ad-22(e)(7)(i) and (ii), each promulgated under the Act,<sup>42</sup> for the reasons described below.

Rule 17Ad-22(e)(7)(i) under the Act requires that NSCC establish,

<sup>38</sup> 12 U.S.C. 5461(b).

<sup>39</sup> 12 U.S.C. 5464(a)(2) and (b).

<sup>40</sup> 12 U.S.C. 5464(b).

<sup>41</sup> *Id.*

<sup>42</sup> 17 CFR 240.17Ad-22(e)(7)(i) and (ii).

<sup>37</sup> *Supra* note 3.

implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for NSCC in extreme but plausible market conditions.<sup>43</sup> Rule 17Ad-22(e)(7)(ii) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to hold qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under Rule 17Ad-22(e)(7)(i) in each relevant currency for which NSCC has payment obligations owed to its Members.<sup>44</sup>

As described above, the proposal would strengthen NSCC's ability to maintain sufficient liquidity to complete end-of-day settlement in the event of the default of a Member. The proposal would do this by allowing NSCC to calculate and collect, when applicable, SLD every Business Day from those Members that pose the largest liquidity exposures to NSCC on that day. The proposal would also include a mechanism to allow NSCC to collect SLD on an intraday basis, including on the first Business Day of the Options Expiration Activity Period, when liquidity exposures are historically higher. These resources would be available to NSCC to complete end-of-day settlement in the event of the default of a Member. Further, SLD are currently, and would continue to be, held by NSCC at either its cash deposit account at the Federal Reserve Bank of New York, at a creditworthy commercial bank, or in other investments pursuant to the Clearing Agency Investment Policy.<sup>45</sup> Therefore, SLD would continue to be considered a qualifying liquid resource, as defined by Rule

17Ad-22(a)(14) under the Act,<sup>46</sup> and would support NSCC's ability to hold qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under Rule 17Ad-22(e)(7)(i), as required by Rule 17Ad-22(e)(7)(ii). Additionally, the proposed alternative pro-rata calculation of Supplemental Liquidity Obligations would provide NSCC with flexibility to determine how the total amount collected on a Business Day, while continuing to collect and hold sufficient liquidity to allow it to complete end-of-day settlement in the event of the default of the Member with the largest payment obligations, as required by Rule 17Ad-22(e)(7)(i).<sup>47</sup> As such, this proposed change would support NSCC's ability to hold sufficient qualifying liquid resources to meet its minimum liquidity resource requirement under Rule 17Ad-22(e)(7)(i) and (ii).<sup>48</sup>

### III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its website of proposed changes that are implemented.

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 advance notice is consistent with the Clearing Supervision 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2021-801 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-2021-801. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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-2021-801 and should be submitted on or before April 8, 2021.

<sup>43</sup> 17 CFR 240.17Ad-22(e)(7)(i).

<sup>44</sup> 17 CFR 240.17Ad-22(e)(7)(ii). For purposes of Rule 17Ad-22(e)(7)(ii), "qualifying liquid resources" are defined in Rule 17Ad-22(a)(14) as including, in part, cash held either at the central bank of issue or at creditworthy commercial banks. *Supra* note 7.

<sup>45</sup> See Securities Exchange Act Release Nos. 79528 (December 12, 2016), 81 FR 91232 (December 16, 2016) (File Nos. SR-DTC-2016-007, SR-FICC-2016-005, SR-NSCC-2016-003); 84949 (December 21, 2018), 83 FR 67779 (December 31, 2018) (File Nos. SR-DTC-2018-012, SR-FICC-2018-014, SR-NSCC-2018-013).

<sup>46</sup> 17 CFR 240.17Ad-22(a)(14).

<sup>47</sup> 17 CFR 240.17Ad-22(e)(7)(i).

<sup>48</sup> 17 CFR 240.17Ad-22(e)(7)(i) and (ii).

By the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>49</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2021-05993 Filed 3-23-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91356; File No. SR-EMERALD-2021-09]

### Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing of a Proposed Rule Change To Adopt Exchange Rule 531, Reports, To Provide for the New “Liquidity Taker Event Report”

March 18, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 5, 2021, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Exchange Rule 531(a) to provide for the new “Liquidity Taker Event Report”.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/emerald> at MIAX Emerald’s principal office, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to adopt Exchange Rule 531(a) to provide for the new “Liquidity Taker Event Report” (the “Report”). The Report is an optional product<sup>3</sup> available to Members.<sup>4</sup> Currently, the Exchange provides real-time prices and analytics in the marketplace. The Exchange believes the additional data points from the matching engine outlined below may help Members gain a better understanding about their interactions with the Exchange. The Exchange believes the Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The proposed Report will increase transparency and democratize information so that all firms that subscribe to the Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange. None of the components of the proposed Report include real-time market data.

Members generally would use a liquidity accessing order if there is a high probability that it will execute against an order resting on the Exchange’s Book.<sup>5</sup> The proposed Report would identify by how much time an order that may have been marketable missed an execution. The proposed Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

The proposed Report will be a Member-specific report and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in

the necessary resources and technology to mitigate missed executions against certain resting orders on the Exchange’s Book. For example, Member A submits an order that is posted to the Book and then Member B enters a marketable order to execute against Member A’s resting order. Immediately thereafter, Member C sends a marketable order to execute against Member A’s resting Order. Because Member B’s order is received by the Exchange before Member C’s order, Member B’s order executes against Member A’s resting order. The proposed Report would provide Member C the data points necessary for that firm to calculate by how much time they missed executing against Member A’s resting order. The Exchange proposes to provide the Report on a T+1 basis. As further described below, the Report will be specific and tailored to the Member that is subscribed to the Report and any data included in the Report that relates to a Member other than the Member receiving the Report will be anonymized.

The Exchange proposes to provide the Report in response to Member demand for data concerning the timeliness of their incoming orders and executions against resting orders. Members have periodically requested from the Exchange’s trading operations personnel information concerning the timeliness of their incoming orders and efficacy of their attempts to execute against resting liquidity on the Exchange’s Book. The purpose of the Report is to provide Members the necessary data in a standardized format on a T+1 basis to those that subscribe to the Report on an equal basis.<sup>6</sup>

Proposed Exchange Rule 531(a) would provide that the Report is a daily report that provides a Member (“Recipient Member”) with its liquidity response

<sup>3</sup> The Exchange intends to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the Liquidity Taker Event Report.

<sup>4</sup> The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>5</sup> The term “Book” means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100. The term “System” means the automated trading system used by the Exchange for the trading of securities. See *id.*

<sup>6</sup> The proposed Report is based on a similar report provided by the NASDAQ Stock Market LLC (“NASDAQ”) for equity securities called the Missed Opportunity—Latency report as part of its NASDAQ Trader Insights offering. See NASDAQ Equity Section 7, Rule 146(a)(2). See also Securities Exchange Act Release No. 78886 (September 20, 2016), 81 FR 66113 (September 26, 2016) (SR-NASDAQ-2016-101) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Add NASDAQ Rule 7046 (Nasdaq Trading Insights)) (“NASDAQ Approval Order”). NASDAQ later renumbered Rule 7046 as Equity Section 7, Rule 146. See Securities Exchange Act Release No. 84684 (November 29, 2018), 83 FR 62936 (December 6, 2018) (SR-NASDAQ-2018-098). See also the CME Group, Inc.’s Time and Sale report. <https://www.cmegroup.com/trading/about-time-sales.html#:~:text=CME%20Globex%20Options%20Group's%20Time%20%20Sales%20report%20provides%20the%20price%20and%20time,calendar%20date%20of%20the%20transaction.&text=A%20zero%20volume%20represents%20an%20indicative%20price,-The%20Indicator%20column.>

<sup>49</sup> 17 CFR 200.30-3(a)(91).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.