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Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: October 28, 2015.

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2015-27903 Filed 11-2-15; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76289; File No. SR-NSCC-2015-008]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide Additional Details Regarding the Requirement that Members Participate in Annual Testing of Business Continuity and Disaster Recovery Plans

October 28, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 23, 2015, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act and Rule 19b-4(f)(6)<sup>4</sup> thereunder. The proposed rule change was effective upon filing with the Commission. 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 a change to NSCC’s Rule 2B of the Rules and Procedures (“Rules”) of NSCC to provide additional details regarding the requirement that Members participate in

annual testing of NSCC’s business continuity and disaster recovery plans (“BCP Testing”), as more fully described below.<sup>5</sup>

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The proposed rule change would amend NSCC’s Rule 2B (Ongoing Membership Requirements and Monitoring) to provide additional details regarding the requirement that NSCC Members participate in NSCC’s annual BCP Testing. Currently, pursuant to Addendum B of the Rules, an applicant is qualified for membership with NSCC if it is “able to satisfactorily communicate with the Corporation and fulfill anticipated commitments to and meet the operational requirements of the Corporation with necessary promptness and accuracy and to conform to any condition and requirement that the Corporation reasonably deems necessary for its protection.”<sup>6</sup> Once a firm becomes a Member of NSCC, NSCC Rule 2B provides that Members may be required to fulfill certain operational testing requirements that may be imposed by NSCC to test and monitor the continuing operational capability of the Members.<sup>7</sup>

Recently, the Commission promulgated Regulation Systems Compliance and Integrity (“Reg. SCI”), which requires NSCC to establish standards to designate members<sup>8</sup> and

<sup>5</sup> Terms not otherwise defined herein have the meaning set forth in NSCC’s Rules, available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

<sup>6</sup> Addendum B, Section 1(C) of NSCC’s Rules, *supra*, note 5.

<sup>7</sup> NSCC Rule 2B, Section 3, *supra*, note 5.

<sup>8</sup> 17 CFR 242.1004(a). In adopting Reg. SCI, the Commission determined not to require covered entities to notify the Commission of its designations or the standards that will be used in designating members, recognizing instead that each entity’s standards, designations, and updates, if applicable, would be part of its records and, therefore, available to the Commission and its staff upon request. See

requires participation by such designated members in scheduled BCP Testing with NSCC on an annual basis.<sup>9</sup> Although NSCC already conducts annual BCP Testing with certain Members,<sup>10</sup> NSCC is proposing to amend Rule 2B to further describe NSCC’s requirement with respect to BCP Testing.

The proposed amendments to Rule 2B would increase transparency regarding BCP Testing, and ensure NSCC’s practice with respect to such testing is consistent with Reg. SCI by setting forth NSCC’s rights to: (i) Designate Members required to participate in BCP Testing using established standards; (ii) determine the scope and reporting of such BCP Testing; and (iii) require Members to comply with such BCP Testing within specified timeframes. In connection with these proposed amendments, NSCC would refine the factors that it currently uses to designate Members for BCP Testing. For example, while NSCC would continue to rely on activity-based thresholds to mandate participation with annual BCP Testing, NSCC would also take into account additional factors when designating firms for BCP Testing, including, but not limited to: (i) Significant operational issues of the Member during the past twelve months; and (ii) past performance of the Member with respect to BCP Testing. Members would be informed of the specific standards that would be used by NSCC, along with any updates or changes to these standards, which would be applied on a prospective basis, through established methods of communication between NSCC and its Members. Likewise, Members would be notified in advance that they have been designated to participate in BCP Testing for the upcoming year, and would be provided details concerning the nature of such testing as the particular test plans are determined.

NSCC believes the proposed rule change would have no impact on NSCC Members relative to what Members are currently required to do. As described above, NSCC already requires certain Members to participate in BCP Testing on an annual basis. The proposed rule change would provide further clarity with respect to these requirements for consistency with Reg. SCI.

Securities and Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (File No. S7-01-13).

<sup>9</sup> 17 CFR 242.1004(a) and (b).

<sup>10</sup> NSCC Rule 2B, Section 3, *supra*, note 5.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

## 2. Statutory Basis

Section 17A(b)(3)(F) of the Act, requires, in part, that NSCC's Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.<sup>11</sup>

Rule 17Ad-22(d)(2), promulgated under the Act, requires NSCC to require that its Members have robust operational capacity to meet obligations arising from participation in the clearing agency, to monitor that its participation requirements are met on an ongoing basis, and to have participation requirements that are objective and publicly disclosed.<sup>12</sup> Rule 17Ad-22(d)(4), promulgated under the Act, requires NSCC to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures, and have business continuity plans that allow for timely recovery of operations and fulfillment of the clearing agency's obligations.<sup>13</sup>

Rule 1004(a) and (b) of Reg. SCI requires NSCC to establish standards for the designation of those Members that NSCC reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of its business continuity and disaster recovery plans, and to designate Members pursuant to those standards and require participation by such designated Members in scheduled BCP Testing annually.<sup>14</sup>

By facilitating the testing of how business continuity and disaster recovery plans function between NSCC and its Members during an emergency, the proposed rule change would facilitate the prompt and accurate clearance and settlement of securities transactions and protect investors and the public interest consistent with of the Act. The proposed rule change would provide additional details to NSCC's Rules regarding the requirement for Members to take part in its BCP Testing annually, strengthening its compliance with Rule 17Ad-22(d)(2) and (4).<sup>15</sup> Further, the proposed rule change would foster the objectives of the Commission under Reg. SCI by helping to ensure resilient and available markets.<sup>16</sup>

As such, NSCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, Rule

17Ad-22(d)(2) and (d)(4), promulgated under the Act, and Rule 1004(a) and (b) of Reg. SCI, cited above.

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

NSCC does not believe that the proposed rule change would impose any burden on competition because the proposed rule change would apply to all Members and only provides additional details regarding an existing requirement.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)<sup>17</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>20</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

NSCC has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to NSCC, the proposed rule change does not present any novel or controversial issues. Rather, NSCC is merely providing additional details regarding BCP Testing requirements or adding provisions that are consistent with or required by Reg. SCI. Accordingly, the Commission believes that waiving the

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires NSCC to give the Commission written notice of NSCC's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

30-day operative delay is consistent with the protection of investors and the public interest as it will allow NSCC to incorporate changes required under Reg. SCI prior to the November 3, 2015 compliance date. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>21</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

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

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2015-008 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-NSCC-2015-008. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public

<sup>21</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>12</sup> 17 CFR 240.17Ad-22(d)(2).

<sup>13</sup> 17 CFR 240.17Ad-22(d)(4).

<sup>14</sup> 17 CFR 242.1004(a) and (b).

<sup>15</sup> 17 CFR 240.17Ad-22(d)(2) and (4).

<sup>16</sup> 17 CFR 242.1004(a) and (b).

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 Web site (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2015-008 and should be submitted on or before November 24, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-27912 Filed 11-2-15; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76292; File No. SR-NYSEMKT-2015-81]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 123D—Equities To Specify That Exchange Systems May Open One or More Securities Electronically if a Designated Market Maker Registered in a Security or Securities Cannot Facilitate the Opening of Trading as Required by Exchange Rules

October 28, 2015.

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 October 23, 2015, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“SEC” or “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.

<sup>22</sup> 17 CFR 200.30-3(a)(12).

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

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

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

The Exchange proposes to amend Rule 123D—Equities to specify that Exchange systems may open one or more securities electronically if a Designated Market Maker registered in a security or securities cannot facilitate the opening of trading as required by Exchange rules. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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 self-regulatory organization 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 those 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 parts of such statements.

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

##### 1. Purpose

The Exchange proposes to amend Rule 123D—Equities (“Rule 123D”) to specify that Exchange systems may open one or more securities electronically if a Designated Market Maker (“DMM”) registered in a security or securities cannot facilitate the open of trading as required by Exchange rules.<sup>3</sup>

Currently, Rule 123D provides that openings may be effected manually or electronically. However, the current rule contemplates that openings would be facilitated by a DMM, as provided for in Rule 104(a)(2)—Equities. The Exchange proposes to re-number Rule 123D to provide that current Rule 123D(1) would be re-numbered as Rule 123D(a), and the heading would be amended to

<sup>3</sup> The proposed amendment contemplates that a DMM's inability to open securities either manually or electronically would be related to business continuity disruptions such as the physical closing of the Exchange Trading Floor or equipment and connectivity breakdowns that prevent the DMM from opening a security either manually or electronically. When a DMM is unable to open securities manually or electronically, the DMM's affirmative obligations under Rule 104 would not apply.

be referred to as “Openings.”<sup>4</sup> Proposed Rule 123D(a)(1) would include the current first paragraph of Rule 123D(1).

The Exchange proposes to add a new paragraph (a)(2) to Rule 123D to provide that, if a DMM cannot facilitate the open of trading for one or more securities for which the DMM is registered, the Exchange would open those securities electronically on a quote or a trade as provided for in paragraphs (a)(3)—(a)(6) of the proposed Rule. Proposed Rule 123D(a)(2) would further provide that manually-entered Floor interest would not participate in any open effected electronically by the Exchange and if previously entered, would be ignored. Finally, proposed Rule 123D(a)(2) would provide that, unless otherwise specified, references to an open or opening in proposed Rules 123D (a)(3)—(a)(6) would also mean a reopening following a trading halt or pause.

Proposed Rule 123D(a)(3) would specify when the Exchange would open a security on a trade and would provide that the Exchange would open a security on a trade if there is buy and sell interest that can trade a round lot or more at a price that is no greater than or no less than a specified range (“Opening Price Range”) away from the last sale price on the Exchange (“Reference Price”). Proposed Rule 123D(a)(3) would further provide that the Exchange would determine the Opening Price Range parameters upon advance notice to market participants.

Unlike DMMs, who have the obligation to trade for their own account to supply liquidity as needed to facilitate openings,<sup>5</sup> the Exchange would not supply any liquidity when effecting an electronic open. Without the addition of liquidity to offset an imbalance, pricing the opening based on a significant imbalance could result in an opening price that may not be reasonably related to the last sale price on the Exchange. To avoid opening a security at a price too far away from the last sale, the Exchange proposes to establish numerical guidelines to provide parameters regarding the price a security may open when the Exchange opens such security on a trade. The Exchange proposes to establish the

<sup>4</sup> The Exchange would also delete the terms “Delayed” and “Halts in trading” from the current Rule 123D(1) heading. The Exchange further proposes to add a new sub-paragraph (b) to Rule 123D, before the current second paragraph of Rule 123D(1), which would be named “Delayed Openings/Halts in Trading.” The Exchange proposes further non-substantive amendments to re-number current Rule 123D(2) as 123D(c). As discussed below, the Exchange proposes to delete current Rule 123D(3) and (4).

<sup>5</sup> See Rule 104(a)(2)—Equities & 104(f)(ii)—Equities.