

#### 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-2017-003 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-2017-003. 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 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-2017-003 and should be submitted on or before May 4, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80398; File No. SR-NYSE-2017-15]

#### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove Section 204.25 (Treasury Stock Changes) From the NYSE Listed Company Manual**

April 7, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 27, 2017, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 remove Section 204.25 ("Treasury Stock Changes") from the NYSE Listed Company Manual (the "Manual"). 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 Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

The Exchange proposes to remove Section 204.25 ("Treasury Stock Changes") from the Manual.

Section 204.25 provides that if issued and listed stock of a listed company is reacquired or disposed of, directly or indirectly, for the account of the company, the Exchange is required to receive notice of such transaction within ten days after the close of the fiscal quarter in which it occurs. This notice need state only the total number of shares reacquired (shares of a company's own stock acquired by the company and held for its own account are typically referred to as "treasury shares") or disposed of during the quarter and the balance held by the company at the end of the quarter. If, during such quarter, there were both reacquisitions and dispositions, the total amount reacquired and the total amount disposed of should be stated. The only purposes for which the Exchange generally uses treasury share information is for determining compliance with its shareholder approval requirements in relation to share issuances and for calculating annual listing fees.

The Exchange believes it is unnecessary to require listed companies to submit this information on a quarterly basis as it has not regularly relied on this information for any regulatory purpose for many years.<sup>4</sup> In the event that the Exchange needs information about a listed company's treasury stock position, it will either request that information from the company in question or it will obtain it by reviewing the company's financial statements included in its Form 10-K or Form 10-Q. In addition, the Exchange notes that the primary purpose for which it uses treasury share data is for purposes of analyzing transactions under Sections 312.03 ("Shareholder Approval") and 303A.08 ("Shareholder Approval of Equity Compensation

<sup>4</sup> A listed company's treasury stock position was significant at one time, as listed companies were able to reissue treasury shares without giving rise to any shareholder approval requirements under Section 312.03 of the Manual. Since the adoption of Section 312.04(j), issuances of treasury shares are treated like any other issuance of common stock for purposes of Section 312.03. See Securities Exchange Act Release No. 54999 (December 21, 2006); 72 FR 170 (January 3, 2007) (SR-NYSE-2006-30).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

Plans”).<sup>5</sup> To that end, the Exchange notes that Part 1 of Section 703.01 of the Manual provides that, in the event a company is issuing shares from treasury in a transaction or series of related transactions, it must notify the Exchange in writing in advance of the issuance, indicating whether shareholder approval is required pursuant to Sections 303A.08 or 312.03 and, if required, the date such shareholder approval was obtained.<sup>6</sup> In addition, the Exchange notes that the form of subsequent listing application companies must complete whenever they apply to list additional shares requires the company to provide information about the total number of shares outstanding at the time of entering into a definitive agreement in connection with the applicable transaction, as well as the number of shares held in treasury at that time. This requirement enables the Exchange to calculate the percentage of the company’s then outstanding shares represented by the shares issued in the transaction and thereby ensure that companies are complying with the shareholder approval requirements of Section 312.03.

Section 902.03 of the Manual provides that companies must pay annual listing fees on all shares outstanding, including treasury shares. The Exchange bills companies for annual fees each year based on the number of shares outstanding as of the previous December 31 (including treasury shares) as reported to the Exchange for that purpose by the company’s transfer agent. As such, the information currently provided to the Exchange by companies pursuant to Section 204.25 with respect to changes in companies’ treasury share positions is not needed in connection with the Exchange’s billing procedures.

The Exchange notes that it does not rely on treasury share reporting under Section 204.25 in monitoring compliance with its continued listing standards with respect to market capitalization and publicly-held shares. Rather, the Exchange relies on the number of shares outstanding as reported on a quarterly basis [sic] on the cover of a company’s annual report filed with the SEC and (where applicable) Form 10-Qs. We also check these

<sup>5</sup> Exchange rules do not impose any substantive restrictions on listed companies’ ability to repurchase their own stock.

<sup>6</sup> If the issuance involves both shares issued from treasury and newly issued, the company may include this notification in the subsequent listing application that the company files to list the newly issued shares.

requirements against information provided by the market data vendors.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> of the Act, in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes the proposed rule change is consistent with these goals in that it is designed to protect the public interest, because the information gathered pursuant to the current treasury stock reporting requirement can be obtained directly from the applicable listed company or from its public filings on an as-needed basis and is also provided in connection with every subsequent listing application.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to remove a treasury share reporting requirement imposed on all listed companies because the Exchange can obtain that information from public disclosures or from the applicable listed company or from its public filings on an as-needed basis. As such, the proposed amendment will not impose any burden on competition.

### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>11</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

## 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-NYSE-2017-15 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NYSE-2017-15. 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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing.

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

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 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 the Exchange. 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-NYSE-2017-15 and should be submitted on or before May 4, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80396; File No. SR-NSCC-2017-801]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Advance Notice To Enhance the Credit Risk Rating Matrix and Make Other Changes

April 7, 2017.

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 22, 2017, National Securities Clearing Corporation ("NSCC") filed with the Securities and

Exchange Commission ("Commission") the advance notice SR-NSCC-2017-801 ("Advance Notice") as described in Items I, II and III below, which Items have been prepared by NSCC.<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 proposed modifications to NSCC's Rules and Procedures ("Rules").<sup>4</sup> The proposed rule change would amend the Rules in order to (i) enhance the matrix (hereinafter referred to as the "Credit Risk Rating Matrix" or "CRRM")<sup>5</sup> developed by NSCC to evaluate the risks posed by certain Members ("CRRM-Rated Members") to NSCC and its Members from providing services to these CRRM-Rated Members and (ii) make other amendments to the Rules to provide more transparency and clarity regarding NSCC's current ongoing membership monitoring process.

#### 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

Written comments relating to this proposal have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

<sup>3</sup> On March 22, 2017, NSCC filed this Advance Notice as a proposed rule change (SR-NSCC-2017-002) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b-4, 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>4</sup> Capitalized terms not defined herein are defined in the Rules, available at [http://www.dtcc.com/-/media/Files/Downloads/legal/rules/nsccl\\_rules.pdf](http://www.dtcc.com/-/media/Files/Downloads/legal/rules/nsccl_rules.pdf).

<sup>5</sup> The proposed rule changes with respect to the enhancement of the CRRM are reflected in the inclusion of (i) qualitative factors and examples thereof in the proposed new definition for "Credit Risk Rating Matrix" in Rule 1 and (ii) Members that are foreign banks or trust companies that have audited financial data that is publicly available in Section 4(b)(i) of Rule 2B.

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

##### Nature of the Proposed Change

The proposed rule change would, among other things, enhance the CRRM to enable it to rate Members that are foreign banks or trust companies and have audited financial data that is publicly available. It would also enhance the CRRM by allowing it to take into account qualitative factors when generating credit ratings for Members. In addition, it would enhance the CRRM by shifting it from a relative scoring approach to an absolute scoring approach.

This rule filing also contains proposed rule changes that are not related to the proposed CRRM enhancements but that provide specificity, clarity and additional transparency to the Rules related to NSCC's current ongoing membership monitoring process.

##### (i) Background

NSCC occupies an important role in the securities settlement system by interposing itself as a central counterparty between Members that are counterparties to transactions accepted for clearing by NSCC, thereby reducing the risk faced by Members. NSCC uses the CRRM, the Watch List (as defined below) and the enhanced surveillance to manage and monitor default risks of Members on an ongoing basis, as discussed below. The level and frequency of such monitoring for a Member is determined by the Member's risk of default as assessed by NSCC. Members that are deemed by NSCC to pose a heightened risk to NSCC and its Members are subject to closer and more frequent monitoring.

##### Existing Credit Risk Rating Matrix

In 2005, the Commission approved a proposed rule change filed by NSCC ("Initial Filing")<sup>6</sup> to establish new criteria for placing certain Members on a list for closer monitoring ("Watch List").

NSCC proposed in the Initial Filing that all U.S. broker-dealers and U.S. banks that were Members would be assigned a rating generated by entering financial data of those Members into an internal risk assessment matrix, *i.e.*, the CRRM. However, the text of the current Rule 2B, Section 4, does not specify which Members are CRRM-Rated Members and whether non-CRRM-Rated

<sup>6</sup> See Securities Exchange Act Release No. 51362 (March 11, 2005), 70 FR 13562 (March 21, 2005) (SR-NSCC-2003-11).

<sup>12</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).