

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

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

[FR Doc. 2018-20998 Filed 9-26-18; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84259; File No. SR-NSCC-2018-007]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify the Rules That Describe the Buy-In Process

September 21, 2018.

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 September 19, 2018, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the Rules and Procedures of NSCC (“Rules”)<sup>5</sup> in order to enhance the rules and procedures that describe the process by which a Member entitled to receive securities from the Corporation, where such securities have failed to deliver, may submit a notice of its intent to purchase, or “buy-in,” any or all of such securities and the processing of the subsequent execution of that buy-in. The proposed changes would not change how buy-ins are processed at NSCC, but would clarify and simplify the rules that

govern this processing, as described below.

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

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

NSCC is proposing to make certain revisions to Rule 10 (Failure to Deliver on Security Balance Orders), Section 7 of Rule 11 (CNS System), Section J of Procedure VII (CNS Accounting Operation), and Sections A and B of Procedure X (Execution of Buy-Ins) of the Rules, which describe the process by which a Member entitled to receive securities (such quantity of securities is defined in the Rules as that Member’s “Long Position”), where such securities have failed to deliver, may provide NSCC with notice of its intent to buy-in any or all of its Long Position.<sup>6</sup> These rules also describe the processing of the subsequent execution of that buy-in.

First, the proposed changes would update and simplify the Rules by removing statements that do not provide important information to Members regarding the buy-in processing service, and NSCC believes this proposed change would make the Rules clearer and more easily understood by Members. For example, these proposed changes would remove descriptions of processing that do not occur at NSCC, and descriptions of rules that are not enforced by NSCC.

Second, the proposed changes would revise, clarify and enhance the transparency of these rules by, for example, (1) reorganizing the rules governing buy-in processing such that they appear in fewer places in the Rules, (2) revising certain statements and adding new descriptions of buy-in processing to improve the transparency of these rules, and (3) correcting and updating the uses of defined terms. NSCC believes making these descriptions clearer would enhance

Members’ understanding of their rights and obligations in connection with this service.

Each of these proposed changes is described below.

###### (i) Overview of the Buy-In Process

Under the Rules, a Member with a Long Position (referred to as the “originator”) may submit to NSCC a notice of its intention to buy-in any or all of its Long Position. Such notice is currently referred in the Rules as “Notice of Intention to Buy-In” and a “Buy-In Notice” and must specify the quantity of securities, not exceeding the originator’s Long Position, it intends to buy-in (such quantity of securities is referred to as the “Buy-In Position”). As described in Section J of Procedure VII of the Rules, Buy-In Notices may be either (1) submitted directly to NSCC by the originator, and such Buy-In Notices are referred to as an “Original Buy-In Notice,” or (2) submitted directly to NSCC by the originator as a “Buy-In Retransmittal Notice” after the originator has received notice that it has failed to deliver securities away from NSCC. References to Buy-In Notices include both Original Buy-In Notices and Buy-In Retransmittal Notices.

The day the Buy-In Notice is submitted to NSCC is referred to as N, and N+1 and N+2 refer to the succeeding days. Original Buy-In Notices expire on N+2 and Buy-In Retransmittal Notices expire on N+1. The Buy-In Position is given high priority for allocation in NSCC’s Continuous Net Settlement (“CNS”)<sup>7</sup> system through the completion of CNS allocations in the day cycle on the day the buy-in expires.

If, with respect to Original Buy-In Notices, a Buy-in Position remains unfilled after the completion of the CNS allocation in the evening cycle on N+1, or shortly after the receipt of a Buy-In Retransmittal Notice, NSCC issues CNS Retransmittal Notices to those Members with the oldest Short Positions in those securities in an amount equal to the originator’s Long Position. Such notices specify the originator and the total quantity of securities requested in the Buy-In Notice. If several Members have Short Positions with the same age, all

<sup>7</sup> CNS is an on-going accounting system which nets each day’s settling trades with the prior day’s closing positions, producing new Short or Long Positions per security issue for each Member. NSCC is always the contra side for all positions. The positions are then passed against the Member’s Designated Depository positions and available securities are allocated by book-entry. This allocation of securities is accomplished through an evening cycle followed by a day cycle. CNS and its operation are described in Rule 11 and Procedure VII of the Rules. *Supra* note 5.

<sup>35</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.

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

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

<sup>5</sup> Available at <http://www.dtcc.com/legal/rules-and-procedures>. Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Rules.

<sup>6</sup> *Id.*

such Members are issued CNS Retransmittal Notices, even if the total of their Short Position exceeds the Buy-In Position.

On the expiration of the Buy-In Notice, if the Buy-In Position is still not satisfied, either in full or in part, the originator may submit to NSCC a Buy-In Order, which notifies NSCC that the originator intends to purchase the remaining securities (*i.e.*, execute a buy-in for the remaining securities). If a Member does not submit the Buy-In Order by the time specified by NSCC, that Member's notice to NSCC of its intent to submit a buy-in on a Buy-In Position (referred to as the "Buy-In Intent") is canceled. If a Member does submit the Buy-In Order by that time, it may subsequently execute the buy-in and then submit to NSCC a Buy-In Execution, notifying NSCC of the position and price of the execution. NSCC would then allocate the quantity bought in among the Members with Short Positions that have been identified on a CNS Retransmittal Notice.

(ii) Rationale for the Proposed Changes

In connection with a review of its Rules, NSCC identified opportunities to improve and update the rules describing buy-in processing in order to improve transparency to Members. For example, NSCC identified opportunities to reorganize the Rules such that the descriptions of buy-in processing occur in fewer places and the Rules are less repetitive. NSCC also identified opportunities remove statements that describe processing that occurs away from its facilities, and does not provide Members with important information regarding the processing of buy-ins at NSCC. Overall, NSCC believes these proposed changes would simplify the Rules and, thereby, improve Members' understanding of their rights and obligations, and NSCC's rights and obligations, in connection with the processing of buy-ins.

(iii) Proposed Changes To Update and Simplify the Rules

NSCC is proposing to update and simplify the Rules that describe the processing of buy-ins by, for example, reorganizing the Rules and removing repetitive descriptions, removing descriptions of processing that occurs away from NSCC, and removing descriptions of discretionary rules that does not enforce. NSCC believes that these proposed changes would make the rules clearer and more easily understood by Members.

a. Proposed Change To Move All Processing Rules Into the Procedures

NSCC is proposing to revise and simplify the Rules by moving all processing rules out of Section 7 of Rule 11 of the Rules and into Section J of Procedure VII of the Rules, and then revising these statements to avoid repetition with statements that are already within Section J of Procedure VII of the Rules. In connection with this proposed change, NSCC would add to Section 7 of Rule 11 of the Rules a cross-reference to the rules for buy-in processing set forth in Procedure VII and the rules for execution of buy-ins set forth in Procedure X of the Rules. NSCC believes that these proposed changes would improve the transparency of the Rules by disclosing the processing rules in fewer locations in the Rules, and would simplify the Rules by removing repetitive statements.

b. Proposed Change To Remove Discretionary Fee for Unexecuted Buy-In Notices

NSCC is proposing to remove from the Rules a discretionary fee that NSCC may charge if a Member submits a Buy-In Notice but does not later execute that buy-in. Before adopting an automated process, the processing of buy-ins by NSCC was largely manual.<sup>8</sup> This fee was intended to off-set the resources required to process a Buy-In Order that was later not executed, and to encourage Members to submit a Buy-In Order only when they intended to later execute that buy-in. NSCC has not charged this fee since the automation of the processing of buy-ins, over ten years ago. As such, NSCC is proposing to remove this discretionary fee from Section 7(e) from Rule 11 of the Rules, in order to reflect its practice of not charging this fee.

c. Proposed Change To Remove Discretion To Adjust Timing of Buy-In Execution

NSCC is proposing to revise a statement in Section J of Procedure VII that a buy-in may be executed if the Buy-In Position has not been satisfied by either a time specified in the Rules, or, due to market events, such earlier time as established by NSCC upon five business days' notice. NSCC has never exercised its discretion to adjust the time when a buy-in may be executed as a result of market events. Therefore, the proposed changes would remove this

statement regarding the possibility that such time would be modified.

d. Proposed Change To Remove Statements That Describe Internal Processes

NSCC is proposing to remove statements in Procedure X of the Rules that describe the steps NSCC takes internally to reflect the execution of a buy-in, but would retain the statement that such execution would be reported to Members through an existing report on the business day following the execution. NSCC believes that this proposed change would simplify the Rules by removing the description of internal processing that does not provide Members with important information regarding the processing of buy-ins. NSCC believes that the proposed change would continue to provide Members with information that is useful to them regarding NSCC's obligation to report executions to Members. By simplifying the Rules, NSCC believes that the proposed change would make the Rules more transparent with respect to information that is important to Members regarding buy-in processing.

e. Proposed Change To Remove Description of Buy-In Processing for Balance Orders

NSCC is proposing to remove Section B of Procedure X of the Rules, which describes buy-in processing for transactions in Balance Order Securities, and to revise Rule 10 to clarify that such processing occurs away from NSCC and pursuant to the rules of the applicable marketplace. Currently, Section B of Procedure X of the Rules describes the rules that govern a buy-in for transactions in Balance Order Securities. However, these rules apply to a process that occurs entirely away from NSCC. The rules set forth in Section B of Procedure X are intended to mirror Rule 11810 of the Financial Industry Regulatory Authority ("FINRA"), which governs the processing of buy-ins that are not otherwise subject to the rules of a registered clearing agency.<sup>9</sup>

NSCC is not involved in the processing of buy-ins for Balance Order Securities, which are subject to either FINRA Rule 11810, the rules of a national securities exchange, or the rules of another registered clearing agency, as applicable. Therefore, in order to avoid any confusion regarding NSCC's involvement in this processing,

<sup>8</sup> See Securities Exchange Act Release No. 53032 (December 28, 2005), 71 FR 1457 (January 9, 2006) (SR-DTC-2005-19), which approved the proposal of NSCC's affiliate, The Depository Trust Company, to adopt an internet-based facility for the processing of buy-ins called SMART/Track for Buy-Ins.

<sup>9</sup> See FINRA Rule 11810 (Buy-In Procedures and Requirements), available at [http://finra.complinet.com/en/display/display\\_main.html?rbid=2403&element\\_id=9699](http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9699).

and to avoid providing Members with rules that are available elsewhere (*i.e.*, FINRA Rule 11810), NSCC is proposing to remove Section B of Procedure X of the Rules. The proposed change would also revise Rule 10 of the Rules to clarify that these buy-ins are subject to the rules of the applicable marketplace, which, NSCC believes, will provide Members with clarity regarding where to find the rules that govern these buy-ins.

(iv) Proposed Changes To Revise, Clarify and Enhance the Rules

NSCC is proposing to revise and clarify the Rules in order to enhance the transparency of the descriptions of buy-in processing. These changes would include reorganizing the Rules by including subheadings and moving statements regarding the same steps in buy-in processing so they appear together. The proposed changes would also clarify and simplify statements to more clearly and directly describe the rights and obligations of both Members and NSCC in buy-in processing. Finally, the proposed changes would correct the use of certain defined terms. NSCC believes these proposed changes would improve the readability of the Rules, making them more transparent to Members and, thereby, improving Members' understanding of the processing of buy-ins.

a. Proposed Change To Reorganize Section J.1 of Procedure VII of the Rules

NSCC is proposing to re-organize Section J.1 of Procedure VII of the Rules by moving the definitions of terms used within this Section to the same location at the beginning of the Section, and then using subheadings throughout the Section to more clearly identify the different steps in buy-in processing. Such subheadings would appear in chronological order and would include, "Defined Terms," "Buy-In Intent," "CNS Allocation Priority and CNS Retransmittal Notices," and "Buy-In Execution." This proposed change would enhance the transparency of the Rules by more clearly identifying for Members the defined terms used in this Section, and the different steps of buy-in processing.

b. Proposed Change to Descriptions of Processing Buy-Ins for Municipal Securities

NSCC is proposing to amend Section 7 of Rule 11 of the Rules to move information related to the processing of buy-ins for positions in municipal securities out of a footnote and into the body of this Rule. The proposed change would make this statement clearer to

Members and would improve their understanding of the processing of these buy-ins. In connection with this change, NSCC is proposing changes that would clarify Section J of Procedure VII of the Rules by creating titles for the two existing subheadings. These subtitles would clarify that Section J.1 describes rules applicable to buy-ins for positions in equity securities and corporate debt securities, and Section J.2 describes rules applicable to buy-ins for positions in municipal securities.

Also in connection with these changes, NSCC is proposing to revise the title of the current Section A of Procedure X of the Rules to clarify that the rules in this section are applicable only to the processing of buy-ins for positions in equity securities and corporate debt securities. NSCC is also proposing to remove from Section A of Procedure X of the Rules the description of processing of buy-ins for positions in municipal securities, as these descriptions are already included in both Section 7 of Rule 11 and Section J.2 of Procedure VII of the Rules. NSCC believes that these revisions would provide Members with both enhanced transparency with respect to the processing buy-ins for positions in municipal securities, and while still simplifying the Rules by removing repetitive statements.

c. Proposed Change To Clarify the Method of Delivery of Notices

NSCC is proposing to revise references in Section J of Procedure VII of the Rules to the "filing" of notices with NSCC, with the "submission" of such notices to NSCC. This proposed change would not alter the meaning of these statements, but would describe the method of delivering these notices to NSCC in a way that conforms to similar statements in other places in the Rules.

d. Proposed Change To Revise Cut-Off Times in Buy-In Processing

NSCC is proposing to revise references to the time, on the applicable date, after which (1) a buy-in may be executed if the Buy-In Position has not been satisfied, as provided for in Section J.1 of Procedure VII of the Rules, and (2) Members with the oldest Short Positions on the expiration date of a Buy-In Intent would be first held liable for the execution of that buy-in, as provided for in the current Section A of Procedure X of the Rules. Currently, both of these cut-off times are specified in the Rules as 3:00 p.m. on the applicable date. NSCC is proposing to change this time to the conclusion of the CNS allocation in the day cycle, which generally occurs around 3:00 p.m. EST

each business day. The current specified time of 3:00 p.m. was intended to align with the conclusion of the CNS allocation in the day cycle because a Buy-In Position may be satisfied, in whole or in part, during this allocation process. Therefore, NSCC believes that the proposed change would more clearly specify the event that was intended as the cut-off time trigger in both of these circumstances, and would avoid any unintended consequences of this cut-off time occurring prior to the completion of this CNS allocation.

e. Proposed Change To Clarify Submission of Buy-In Order and Buy-In Execution

NSCC is proposing to add statements to clarify the distinction between the Buy-In Order and the subsequent Buy-In Execution notices. Currently, Procedure X does not clearly specify that an originator must submit a Buy-In Order on the expiration date of a Buy-In Intent, prior to submitting a Buy-In Execution later that same day. In order to more clearly identify these two, separate notices, and the consequences of failing to properly submit either on the expiration date of the Buy-In Order, the proposed changes would (1) revise existing statements to clarify that the Buy-In Order and the Buy-In Execution are two separate, required notifications, (2) relocate the statement that an originator that has not submitted a Buy-In Order may not later submit a Buy-In Execution and is required to recommence the buy-in process by submitting a new Buy-In Intent, and (3) add a parallel statement that an originator that has submitted a Buy-In Order but does not later execute that buy-in must recommence the buy-in process by submitting a new Buy-In Intent. These proposed changes would more clearly identify the notifications that are required to be submitted in connection with the execution of a buy-in, and the consequences of failing to submit either of these notifications. NSCC believes that this proposed change would improve the transparency of the Rules regarding Member's obligations in connection with this process.

f. Proposed Change To Clarify Rules Regarding Execution of a Buy-In

NSCC is proposing to clarify in Procedure X the process by which buy-ins are executed. This proposed change would make clearer that an originator must provide NSCC with the details of the execution after the execution is completed to allow NSCC to reflect the positions by journal entry. This proposed change would also provide

Members with notice that NSCC is not responsible for verifying the terms of the an executed buy-in that are reported to NSCC by an originator, and that any disputes regarding such terms should be addressed away from NSCC. Finally, this proposed change would remove a note that states a Buy-In Order should contain instructions regarding the execution of buy-ins. This information is not required by NSCC in a Buy-In Order. NSCC believes that this proposed change would provide Members with more transparency regarding their rights and obligations with respect to the execution of buy-ins by more clearly describing the process.

#### g. Proposed Change To Revise and Correct Defined Terms

NSCC is proposing to revise and correct the defined terms used in the rules that describe buy-in processing. This proposed change would revise the use of the term “Notice of Intention to Buy-In” and “Buy-In Notice,” which are currently used interchangeably, with a new defined term, “Buy-In Intent.” This proposed change would ensure consistent use of one defined term to refer to this notice, and would use a new term that is both brief and descriptive of the purpose of this notice. In connection with this proposed change, NSCC would also replace references to the “Buy-In Notice” in Sections E.3 and E.4 of Procedure VII with “Buy-In Intent” and “Buy-In Intent notices,” as applicable.

NSCC is also proposing to revise a reference to “tender offer” in Section J of Procedure VII of the Rules, to refer more generally to “voluntary reorganizations.” The sentence where this term appears states that, with respect to securities subject to voluntary reorganizations, Members may not submit a Buy-In Intent after the expiration of the event. Currently the sentence only refers to the expiration date of the tender offer, but was intended to more generally include any voluntary reorganization events. NSCC believes that the proposed change would clarify the intended meaning of this sentence.

Finally, NSCC is proposing to correct and update the uses of terms that are defined elsewhere in the Rules. For example, the proposed changes would use the capitalized, defined terms for Long Position and Short Position, when appropriate. In connection with this change, the proposed changes would also correct internal cross-references to refer to “Section,” where the term “paragraph” is currently used, and to refer to “Procedure,” where the term “section” is currently used, for example.

NSCC believes that this proposed change would improve Members’ ability to understand these Rules.

#### 2. Statutory Basis

NSCC believes that the proposed changes are consistent with the Section 17A(b)(3)(F) of the Act, which requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, for the reasons described below.<sup>10</sup> As described above, the proposed rule change is designed to increase transparency of the Rules by simplifying, updating and revising the descriptions of the processing of buy-ins. The buy-in process promotes the prompt and accurate clearance and settlement of securities transactions by providing Members with Long Positions with a process that facilitates the purchase of securities when delivery of such securities previously failed. NSCC believes that the proposed changes to enhance the description of this process in the Rules and help Members to more readily understand their rights and obligations in connection with the use of this service would facilitate the functioning of the buy-in process. As such, the proposed changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>11</sup>

Rule 17Ad-22(e)(23)(i) under the Act requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for publicly disclosing all relevant rules and material procedures.<sup>12</sup> As described above, the proposed rule change would improve the transparency, clarity and accuracy of the Rules such that these provisions of the Rules would better disclose all relevant and material aspects of the buy-in process. Therefore, NSCC believes the proposed rule changes are consistent with Rule 17Ad-22(e)(23)(i).<sup>13</sup>

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

NSCC does not believe that the proposed rule changes would have any impact, or impose any burden, on competition. The proposed rule changes are designed to improve Members’ understanding of their rights and obligations with respect to the use of the buy-in processing service. These

proposed changes would be applicable to all Members that utilize this service, and would not alter Members’ rights or obligations. Therefore, NSCC does not believe that the proposed rule changes would have any impact on competition.

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

NSCC has not solicited or received any written comments relating to this proposal. NSCC will notify the Commission of any written comments that it receives.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>15</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-2018-007 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-2018-007. 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

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>11</sup> *Id.*

<sup>12</sup> 17 CFR 240.17Ad-22(e)(23)(i).

<sup>13</sup> *Id.*

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2018-007 and should be submitted on or before October 18, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33244; 812-14906]

### Distillate Capital Partners LLC, et al.

September 24, 2018.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies ("Funds") to issue shares

redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds.

**APPLICANTS:** Distillate Capital Partners LLC (the "Initial Adviser"), an Illinois limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940, ETF Series Solutions (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Quasar Distributors, LLC, (the "Distributor"), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act").

**FILING DATES:** The application was filed on May 17, 2018, and amended on August 29, 2018.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 19, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090; Applicants: Distillate Capital Partners LLC, 53 West Jackson Blvd., Suite 530, Chicago, Illinois 60604; ETF Series Solutions, 615 East Michigan Street, Milwaukee, Wisconsin 53202; Quasar Distributors, LLC, 777 East Wisconsin

Avenue, 6th Floor, Milwaukee, Wisconsin, 53202.

#### FOR FURTHER INFORMATION CONTACT:

Barbara T. Heussler, Senior Counsel, at (202) 551-6990, or Andrea Ottomaneli Magovern, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

#### Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds ("ETFs").<sup>1</sup> Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant," which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-Tier Affiliate"), of the Trust or a Fund, of the Adviser, of any sub-adviser or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.<sup>2</sup>

<sup>1</sup> Applicants request that the order apply to the Distillate U.S. Fundamental Stability & Value ETF and any additional series of the Trust and any other open-end management investment company or series thereof (each, included in the term "Fund"), each of which will operate as an ETF and will track a specified index comprised of domestic and/or foreign equity securities and/or domestic and/or foreign fixed income securities (each, an "Underlying Index"). Each Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto, an "Adviser") and (b) comply with the terms and conditions of the application. For purposes of the requested order, the term "successor" is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

<sup>2</sup> Each Self-Indexing Fund will post on its website the identities and quantities of the investment

<sup>16</sup> 17 CFR 200.30-3(a)(12).