

Moreover, the Exchange notes that, as discussed in the Proposed CAT Fee Plan Amendment, the Operating Committee determined that the proposed fees do not impose an unnecessary or inappropriate burden on competition as they fairly and equitably allocate costs among CAT Reporters.<sup>55</sup> The Operating Committee determined that the cost allocation between Participants and Industry Members recognizes the greater number of Industry Members as compared to the Participants and the greater collective revenue of Industry Members as compared to Participants. In addition, cost allocations among Industry Members based on message traffic fairly and equitably distribute CAT costs. Furthermore, the market maker discounts and the Maximum Industry Member CAT Fee address the potential for burdens on market makers and Industry Members with outsized message traffic potentially resulting from the proposed fee calculations. Moreover, the Operating Committee determined that the Minimum Industry Member CAT Fee would not act as a barrier to entry for smaller Industry Member CAT Reporters.

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

No written comments were either solicited or received.

### 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)(ii) of the Act.<sup>56</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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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.

<sup>55</sup> See Proposed CAT Fee Plan Amendment at 21070.

<sup>56</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-GEMX-2021-03 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-GEMX-2021-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the 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 the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-GEMX-2021-03 and should be submitted on or before June 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>57</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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<sup>57</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91770; File No. SR-NSCC-2021-801]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of No Objection To Advance Notice To Amend the Supplemental Liquidity Deposit Requirements

May 4, 2021.

#### I. Introduction

On March 5, 2021, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") advance notice SR-NSCC-2021-801 ("Advance Notice") pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 ("Clearing Supervision Act")<sup>1</sup> and Rule 19b-4(n)(1)(i)<sup>2</sup> under the Securities Exchange Act of 1934 ("Exchange Act")<sup>3</sup> to amend its Supplemental Liquidity Deposit Requirements.<sup>4</sup> The Advance Notice was published for comment in the **Federal Register** on March 24, 2021,<sup>5</sup> and the Commission has received comments in support of the changes proposed in the Advance Notice.<sup>6</sup> The Commission is hereby providing notice of no objection to the Advance Notice.

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

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

<sup>3</sup> 15 U.S.C. 78a *et seq.*

<sup>4</sup> See Notice of Filing *infra* note 5, at 86 FR 15750.

<sup>5</sup> Exchange Act Release No. 91347 (March 18, 2021), 86 FR 15750 (March 24, 2021) (File No. SR-NSCC-2021-801) ("Notice of Filing"). NSCC also filed a related proposed rule change with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder. 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4, respectively. NSCC seeks approval of the proposed changes to its rules necessary to implement the Advance Notice (the "Proposed Rule Change"). The Proposed Rule Change was published in the **Federal Register** on March 24, 2021. Securities Exchange Act Release No. 91350 (March 18, 2021), 86 FR 15738 (March 24, 2021) (SR-NSCC-2021-002). The comment period for the related Proposed Rule Change closed on April 14, 2021.

<sup>6</sup> Comments are available at <https://www.sec.gov/comments/sr-nsc-2021-801/srnsc2021801.htm>. Since the proposal contained in the Advance Notice was also filed as a separate but related Proposed Rule Change, all public comments received on the proposals are considered regardless of whether the comments are submitted to the Proposed Rule Change or the Advance Notice. To date, the comments received generally support the proposal.

## II. The Advance Notice

### A. Background

As a central counterparty (“CCP”),<sup>7</sup> NSCC occupies an important role in the securities settlement system by interposing itself between counterparties to financial transactions, becoming the buyer to each seller and seller to each buyer to ensure the performance of the contract, thereby reducing the risk faced by its Members<sup>8</sup> and contributing to global financial stability. NSCC’s liquidity risk management plays an integral part in NSCC’s ability to perform its role as a CCP. If a Member defaults, NSCC, as a CCP, would need to complete settlement of guaranteed transactions on the failing Member’s behalf from the date of default through the remainder of the settlement cycle (currently two days for securities that settle on a regular way basis in the U.S. markets). To do so, and to meet its related regulatory requirements, NSCC seeks to maintain sufficient liquid resources in order to meet the potential funding required to settle outstanding transactions of a defaulting Member in a timely manner, as well as to hold qualifying liquid resources sufficient to meet its minimum liquidity resource requirement in each relevant currency for which it has payment obligations owed to its Members.<sup>9</sup>

NSCC has a number of default liquidity resources that it considers to be qualifying liquid resources for the purposes of Rule 17Ad-22(a)(14).<sup>10</sup> These resources include: (1) Cash deposits to the NSCC Clearing Fund;<sup>11</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>12</sup> and

<sup>7</sup> 17 CFR 240.17Ad-22(a)(1).

<sup>8</sup> Capitalized terms not defined herein are defined in NSCC’s Rules and Procedures (“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).

<sup>9</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) (approving NSCC’s Liquidity Risk Management Framework).

<sup>10</sup> See Notice of Filing, *supra* note 5, at 15751. Qualifying liquid resources include, among other things: Cash held either at the central bank of issue or at creditworthy commercial banks, and assets that are readily available and convertible into cash through prearranged funding arrangements, such as committed arrangements without material adverse change provisions, including lines of credit, foreign exchange swaps, and repurchase agreements. 17 CFR 240.17Ad-22(a)(14).

<sup>11</sup> See Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the Rules, *supra* note 8.

<sup>12</sup> See Securities Exchange Act Release Nos. 75730 (August 19, 2015), 80 FR 51638 (August 25,

(b) term debt (“Term Debt Issuance”);<sup>13</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>14</sup> and (4) supplemental liquidity deposits, collected pursuant to NSCC Rule 4(A), as discussed further below.<sup>15</sup>

### B. Current Rules Relating to Supplemental Liquidity Deposits

Currently, NSCC only collects supplemental liquidity deposits during monthly options expiry periods in order to cover the heightened liquidity exposure resulting from increased trading activity around options expiration.<sup>16</sup> NSCC only collects supplemental liquidity deposits from its 30 largest Members or group of affiliated Members (hereinafter, “Providers”).<sup>17</sup> NSCC calculates each Provider’s supplemental liquidity obligation for an upcoming options expiry period using an estimate based on NSCC’s highest liquidity need and the Provider’s settlement activity during the prior 24-months.<sup>18</sup> Providers, in turn, must fund their supplemental liquidity obligations two business days prior to the start of the options expiry period, which NSCC will return seven business days after the end of that period.<sup>19</sup>

In order to ensure NSCC maintains adequate liquidity resources throughout the options expiry period, providers may voluntarily prefund additional supplemental liquidity deposits at the start of the period, if it anticipates

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

<sup>13</sup> See Securities Exchange Act Release No. 88146 (February 7, 2020), 85 FR 8046 (February 12, 2020) (File No. SR-NSCC-2019-802).

<sup>14</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>15</sup> See Rule 4(A) (Supplemental Liquidity Deposits) of the Rules, *supra* note 8. 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>16</sup> See Rule 4(A), *supra* note 8. NSCC defines the duration of the options expiry periods in its Rules, which typically runs from the third Friday of the month to the following Tuesday. See *id.*

<sup>17</sup> See Section 2 of Rule 4(A), *supra* note 8. NSCC may use a Provider’s supplemental liquidity deposit to satisfy a loss or liability arising only from that Provider’s default on its obligations to NSCC. Supplemental liquidity deposits are not otherwise subject to NSCC’s Loss Allocation Waterfall. See Section 13(c) of Rule 4(A), *supra* note 8.

<sup>18</sup> See Section 2 of Rule 4(A), *supra* note 8. Typically, NSCC performs this calculation, at the latest, one week prior to the start of the options expiry period.

<sup>19</sup> See Sections 4 and 9 of Rule 4(A), *supra* note 8.

increases in its trading activity, compared to its historical activity, will create a liquidity shortfall at NSCC.<sup>20</sup> In the event a Provider fails to provide adequate voluntary prefunded deposits, NSCC may require the Provider to fund additional supplemental liquidity deposits if NSCC experiences a resulting liquidity shortfall,<sup>21</sup> which NSCC may hold for up to 90 days.<sup>22</sup> The 90-day lock-up incentivizes Providers to voluntarily prefund their supplemental liquidity deposits in order to ensure NSCC maintains adequate liquidity resources throughout the options expiry period.

### C. Proposed Changes to the Rules Relating to Supplemental Liquidity Deposits

As discussed above, NSCC may only collect supplemental liquidity deposits during monthly options expiry periods under its current Rules. However, NSCC can face sudden liquidity shortfalls on any business day, not just those business days that fall within monthly options expiry periods, particularly during volatile market conditions unrelated to options expiration.<sup>23</sup> To address this issue, NSCC proposes to change the frequency at which it may collect supplemental liquidity deposits to each business day, based on a daily calculation. This proposed approach to collecting supplemental liquidity deposits should allow NSCC to respond quickly to any sudden liquidity shortfalls arising from a Provider’s activity, regardless of when those shortfalls occur.

NSCC also proposes an alternative pro rata daily calculation in the rare event its regular daily calculation would inadvertently result in collecting supplemental liquidity deposits from multiple Providers that, taken together, would significantly exceed NSCC’s liquidity needs on that day. Additionally, NSCC proposes the ability to collect supplemental liquidity deposits on an intraday basis in certain instances where sudden intraday increases in liquidity risk justify shortening the amount of time NSCC is exposed to that risk, including a mandatory intraday collection in connection with monthly options expiry periods.

<sup>20</sup> See Section 2 of Rule 4(A), *supra* note 8. See also, Notice of Filing, *supra* note 5, at 15752.

<sup>21</sup> See Section 7 of Rule 4(A), *supra* note 8.

<sup>22</sup> See Section 10 of Rule 4(A), *supra* note 8.

<sup>23</sup> See Notice of Filing, *supra* note 5, at 15752.

### 1. Proposed Daily Calculation of Supplemental Liquidity Deposits

A Provider<sup>24</sup> will be obligated to provide a supplemental liquidity deposit on each business day in which its settlement activity causes a liquidity shortfall at NSCC.<sup>25</sup> NSCC will provide a notice to each Provider of the amount of its supplemental liquidity deposit, which the Provider will be required to fund within one hour of such notice.<sup>26</sup> NSCC proposes to return supplemental liquidity deposits on the next business day.<sup>27</sup>

NSCC states that, under its proposed calculation, it will no longer need to estimate its liquidity need for a Provider's expected settlement activity based on the Provider's historical settlement activity.<sup>28</sup> Instead, each Provider's deposit will be calculated based on NSCC's actual liquidity need based on the Provider's daily settlement activity in the event the Provider defaulted on that day, which NSCC believes will provide both NSCC and Providers with a more reliable measure of the liquidity risks posed to NSCC.<sup>29</sup>

NSCC provided the Commission with the results of an impact study comparing the proposal against the observed regulatory liquidity needs and

<sup>24</sup> Under the proposal, Providers will continue to be the 30 largest Members or group of affiliated Members, but NSCC proposes to simplify how it determines the 30 Providers in order to provide greater transparency and predictability in its determination. The 30 Providers will be determined daily and will be based on the Provider's settlement activity during the prior 24-months. NSCC's determination will no longer require a calculation of liquidity exposures the Providers presented to NSCC based on NSCC's qualifying liquid resources throughout a 24 month lookback period. NSCC will continue to make available to each Member daily information on NSCC's liquidity need based on that Member's settlement activity on the previous business day.

<sup>25</sup> A liquidity shortfall will arise if NSCC's daily liquidity need exceeds its qualifying liquid resources, assuming stressed market conditions. NSCC will continue to apply stress scenarios in determining its total qualifying liquid resources in order to anticipate market conditions that could cause those resources to be unavailable on that day. Because the daily calculation will be done at the start of each business day, it will be based on the qualifying liquid resources available to NSCC as of the end of the prior business day.

<sup>26</sup> NSCC's proposed timing would mirror the current requirement that is applied to its Members' Required Fund Deposits (*i.e.*, margin), which is also calculated and collected daily, and must be funded within one hour of demand. NSCC expects to deliver notification of Provider obligations by around 8:30 a.m. ET each business day, with deposits required by no later than 9:30 a.m. ET. *See* Notice of Filing, *supra* note 5, at 15753.

<sup>27</sup> *See* Notice of Filing, *supra* note 5, at 15754. Because NSCC would recalculate supplemental liquidity deposits daily, NSCC will no longer need to hold deposits for the extended periods under its current Rules. *See id.*

<sup>28</sup> *See* Notice of Filing, *supra* note 5, at 15753.

<sup>29</sup> *See id.*

NSCC's qualifying liquid resources available during the period from 2016 through 2020. The study assessed both pro-forma and hypothetical impacts of the proposal under various liquidity scenarios. The study also analyzed historical trends including the average composition and rankings of the top 30 Providers at NSCC during the 2016 to 2020 period. Based on the pro-forma/hypothetical impact as well analysis of the top Providers, the study's results generally indicate that the proposal would continue to allow NSCC to meet its regulatory liquidity obligations, and the largest Members would continue to be the ones affected by supplemental liquidity obligations.<sup>30</sup>

### 2. Proposed Pro Rata Calculation of Supplemental Liquidity Deposits

As a potential alternative to the calculation described above, NSCC proposes a discretionary pro rata calculation that could apply in the event two or more Providers each would be obligated to provide a supplemental liquidity deposit of more than \$2 billion on a business day pursuant to the calculation described above.<sup>31</sup> Under the proposed alternative, NSCC will have the option to allocate, on a pro rata basis, its largest liquidity need on a business day to all Providers that are required to make a supplemental liquidity deposit on that day, thereby reducing all such Providers' obligations to NSCC on that day. NSCC's determination will be based on the market conditions at that time. For example, NSCC may determine that, in certain market conditions, this alternative approach would be appropriate to alleviate liquidity pressures on all Providers required to make a supplemental liquidity deposit on that day.<sup>32</sup> NSCC states this alternative would allow NSCC to use this pro rata calculation to sufficiently cover its liquidity exposure on that day, without requiring that all Providers fund the total amount of its calculated supplemental liquidity deposit on that day.

<sup>30</sup> *See id.* NSCC further states that if its other qualifying liquid resources materially decrease, it would expect to see an increase in both number and amount of supplemental liquidity obligations that Providers would have been required to fund under the proposed rule. *See id.* at 15756.

<sup>31</sup> NSCC represents that it has never had two or more Providers owe more than \$2 billion on a calculation date since its adoption of the supplemental liquidity deposit Rules in 2013. Therefore, NSCC believes this alternative calculation would only be available in very limited circumstances. *See* Notice of Filing, *supra* note 5, at 15754.

<sup>32</sup> *See* Notice of Filing, *supra* note 5, at 15754.

### 3. Proposed Intraday Supplemental Liquidity Calls

NSCC also proposes to establish intraday supplemental liquidity calls, which are intended to allow NSCC to calculate and collect additional supplemental liquidity deposits on an intraday basis if a Provider's increased daily activity levels or projected settlement activity causes a NSCC liquidity shortfall during a given day.<sup>33</sup> NSCC believes the proposed intraday supplemental liquidity calls will help to mitigate increased liquidity exposures presented to NSCC on an intraday basis in specified circumstances, as discussed further below.<sup>34</sup>

#### i. Proposed Mandatory Intraday Supplemental Liquidity Call

First, NSCC proposes to establish a mandatory monthly intraday supplemental liquidity call that is calculated and collected, when applicable, on the first business day (typically a Friday) of an options expiry period.<sup>35</sup> A Provider's mandatory intraday supplemental liquidity call will be the difference between, on the one hand, NSCC's qualifying liquid resources and, on the other hand, NSCC's daily liquidity need based on the Provider's settlement activity at the start of the business day, recalculated to account for both the Provider's actual settlement activity submitted to NSCC over the course of the day, and the Provider's projected settlement activity in stock options expected to be submitted to NSCC.<sup>36</sup> Because NSCC's recalculated daily liquidity need will not factor in late day trades or other off-setting settlement activity,<sup>37</sup> NSCC proposes to adjust its re-calculated daily liquidity need using an estimated

<sup>33</sup> The alternative pro rata calculation described in Section I.LC.2 would not apply to an intraday supplemental liquidity call.

<sup>34</sup> *See* Notice of Filing, *supra* note 5, at 15754.

<sup>35</sup> NSCC will retain how it defines the duration of the options expiry periods in its Rules. *See supra* note 19.

<sup>36</sup> Each business day, NSCC receives information regarding projected settlement activity from The Options Clearing Corporation ("OCC") pursuant to a Stock and Futures Settlement Agreement. That agreement 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). In this case, the re-calculation will be based on the data NSCC receives from OCC late Thursday.

<sup>37</sup> *See* Notice of Filing, *supra* note 5, at 15754. For example, an affiliated Member may be entitled, under NSCC Rules, to liquidity credits based the trading activity of its affiliates, who are also Members, in order to determine NSCC's net liquidity exposure from the affiliated family of Members.

netting percentage based on each Provider's average percentage of netting from its off-setting settlement activity observed over the prior 24 months. NSCC states that the actual settlement activity flowing into NSCC for cash settlement of stocks underlying expiring options is typically lower than the projected settlement activity NSCC receives from OCC on the Thursday before the start of the options expiry period due to late day offsetting trades in stock options on that Friday; therefore, applying this netting percentage should more accurately reflect the actual liquidity exposures that will be presented to NSCC from the Providers.<sup>38</sup>

#### ii. Proposed Discretionary Intraday Supplemental Liquidity Call

Second, NSCC proposes to establish a discretionary intraday supplemental liquidity call on any business day other than the first business day during options expiry periods. Under this provision, NSCC will have the discretion to call for additional supplemental liquidity deposits on an intraday basis on any such business day if a Provider's increased activity levels during that day would cause a liquidity shortfall at NSCC. The amount of a Provider's intraday supplemental liquidity call, pursuant to NSCC's discretion, would be the difference between NSCC's daily liquidity need, recalculated to take into account the increase in the Provider's settlement activity during the day, and NSCC's qualifying liquid resources.

NSCC states that it would collect a discretionary intraday call in circumstances where NSCC believes it should accelerate the collection of a Provider's supplemental liquidity obligation because that Provider's intraday settlement activity would cause NSCC's liquidity needs to exceed its liquidity resources.<sup>39</sup> For example, NSCC may impose an intraday supplemental liquidity call on a Provider if NSCC determines that Provider is unlikely to meet its projected settlement obligations through the settlement cycle due to rapidly escalating financial stress.<sup>40</sup> NSCC will make this determination based on a variety of factors, including NSCC's assessment of the Provider's ability to meet its obligations to NSCC (*i.e.*, an assessment of the Provider's creditworthiness on a particular business day) or estimates of settlement activity that could offset settlement

exposures and are not reflected in NSCC's liquidity estimates.<sup>41</sup>

### III. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.<sup>42</sup>

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.<sup>43</sup> Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):<sup>44</sup>

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among other areas.<sup>45</sup>

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the "Clearing Agency Rules").<sup>46</sup> The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.<sup>47</sup> As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and

the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission finds the proposal in the Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,<sup>48</sup> and in the Clearing Agency Rules, in particular Rule 17Ad-22(e)(7)(i) and (ii).<sup>49</sup>

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

The Commission finds that the Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act.<sup>50</sup> Specifically, the Commission finds that the changes proposed in the Advance Notice are consistent with promoting robust risk management in the area of liquidity risk, promoting safety and soundness, reducing systemic risks, and supporting the broader financial system.

The Commission finds that the changes proposed in the Advance Notice are consistent with promoting robust risk management, in particular the management of liquidity risk presented to NSCC. As a CCP and a SIFMU, it is imperative that NSCC maintains adequate resources to satisfy liquidity needs arising from its settlement obligations, including in the event of a Member default. As described above in Section II.C.1, NSCC currently may only collect supplemental liquidity deposits during monthly options expiry periods. However, NSCC can also face increased liquidity exposure from a Member's activity outside of these periods, even if unrelated to options settlement activity. The ability to calculate and collect supplemental liquidity deposits, as applicable, on a daily basis should help NSCC more accurately manage its daily liquidity exposures based on Members' actual activity, as opposed to only being able to collect additional liquidity resources from Members during monthly options expiry. Moreover, the proposal would allow NSCC to determine the amount of supplemental liquidity deposits based on Members' actual activity, providing more precise and, potentially, lower charges for Members than provided under the current methodology, which uses estimates based on a look-back period and can, on occasion, result in NSCC collecting more resources than needed to cover its exposure.

<sup>41</sup> See *id.*

<sup>42</sup> See 12 U.S.C. 5461(b).

<sup>43</sup> 12 U.S.C. 5464(a)(2).

<sup>44</sup> 12 U.S.C. 5464(b).

<sup>45</sup> 12 U.S.C. 5464(c).

<sup>46</sup> 17 CFR 240.17Ad-22. See Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11). See also Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) ("Covered Clearing Agency Adopting Release"). NSCC is a "covered clearing agency" as defined in Rule 17Ad-22(a)(5).

<sup>47</sup> *Id.*

<sup>48</sup> 12 U.S.C. 5464(b).

<sup>49</sup> 17 CFR 240.17Ad-22(e)(7)(i) and (ii).

<sup>50</sup> 12 U.S.C. 5464(b).

<sup>38</sup> See Notice of Filing, *supra* note 5, at 15754.

<sup>39</sup> See *id.*

<sup>40</sup> See *id.*

Additionally, as described above in Section II.C.3, NSCC also proposes to include both mandatory and discretionary intraday supplemental liquidity calls which would allow NSCC to calculate and collect additional supplemental liquidity deposits on an intraday basis if a Provider's increased activity levels during that day or projected settlement activity causes NSCC's daily liquidity need to exceed its qualifying liquid resources. The Commission finds that the mandatory monthly intraday supplemental liquidity calls on the first business day of the monthly options expiry periods should help NSCC continue to manage the potential increased liquidity exposures that may arise from options settlement-related activity by allowing it to accelerate the collection of supplemental liquidity deposits on that day, as opposed to waiting for the proposed daily collection that would occur on the morning of the following business day. Moreover, the proposed discretionary intraday supplemental liquidity calls should collect additional supplemental liquidity deposits from Members whose activity outside of the monthly options expiry periods may cause a sudden increase in NSCC's liquidity needs on an overnight basis. Therefore, because NSCC's proposal is designed to enable NSCC to better limit its liquidity exposures that could arise in the event of a Member default, the Commission finds the changes proposed in the Advance Notice promote robust risk management, specifically in the area of liquidity risk.

The Commission also finds that the changes proposed in the Advance Notice are consistent with promoting safety and soundness, reducing systemic risks, and promoting the stability of the broader financial system. As described above, NSCC's proposal to calculate and collect, if applicable, supplemental liquidity deposits on a daily basis could provide NSCC with additional liquidity resources, including on days outside of monthly Options Expiration Activity Periods, in the event of a Member default. Therefore, the changes proposed would promote safety and soundness by enabling NSCC to obtain additional liquid resources to cover a liquidity gap that could arise in the event of a Member default.<sup>51</sup> By

<sup>51</sup> The Commission has reviewed and considered the results of NSCC's hypothetical impact studies. See *supra* note 30 and accompanying text. Based on that review, the Commission concludes that the proposal could help mitigate the risks to NSCC that could arise if NSCC is unable to secure adequate default liquidity from other sources in an amount necessary to meet its liquidity needs. For example, the proposal could help mitigate the risks that

covering such a gap, the proposal bolsters NSCC's ability to meet its settlement obligations in the event of a Member default and its ability to continue to provide CCP services to its Members.

In addition, the proposed changes should reduce the potential procyclicality of NSCC's liquidity demands, which could reduce the potential for unexpected liquidity stress to market participants in certain situations. Because NSCC would now calculate and collect, if applicable, supplemental liquidity deposits on a daily basis, the proposal should reduce the likelihood that NSCC would have to call on its Members to contribute additional liquidity in periods of financial stress, when liquidity may be most costly. Therefore, the Commission finds that by enhancing NSCC's ability to address losses and liquidity pressures that otherwise might cause financial distress to NSCC or its Members, the Advance Notice promotes safety and soundness.

Maintaining adequate liquidity resources to help meet settlement obligations in the event of a Member default also enhances NSCC's ability to manage systemic risk and to support the broader financial system. NSCC's ability to obtain additional liquid resources for use in the event of a Member default should reduce the risk of loss contagion (*i.e.*, the risk of losses arising at other NSCC Members if NSCC is unable to deliver cash or securities on the defaulting Member's behalf). Reducing the risk of loss contagion would reduce the potential transmission of financial shocks from defaulting Members to non-defaulting Members, thereby enhancing the ability of NSCC and its Members to continue to provide stability and safety to the financial markets that they serve.

Additionally, establishing an optional alternative pro rata calculation of supplemental liquidity deposits could help NSCC alleviate any unintended but significant liquidity constraints on its Members, while still enabling NSCC to meet its regulatory requirements with respect to liquidity without collecting more liquidity resources than needed. The proposed pro rata calculation would provide NSCC with a method to reduce the supplemental liquidity deposits owed by all Providers who would otherwise be obligated to provide such a deposit, which would be appropriate in light of the likely stressed

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 renew its Line of Credit at the targeted amount.

market conditions that would result in two or more Providers presenting a potential supplemental liquidity deposit of over \$2 billion. Likewise, because NSCC would recalculate supplemental liquidity deposit obligations each business day, NSCC will no longer need to hold supplemental liquidity deposits for the extended periods under its current Rule 4(A), which could also alleviate liquidity pressures on its Members. Accordingly, the Commission finds the proposal is consistent with reducing systemic risks, and promoting the stability of the broader financial system as contemplated in Section 805(b) of the Clearing Supervision Act.<sup>52</sup>

For the reasons stated above, the Commission finds the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.<sup>53</sup>

#### *B. Consistency With Rule 17Ad-22(e)(7)(i) and (ii)*

The Commission finds the changes proposed in the Advance Notice are consistent with Rules 17Ad-22(e)(7)(i) and (ii), each promulgated under the Exchange Act,<sup>54</sup> for the reasons described below.

Rule 17Ad-22(e)(7)(i) under the Exchange Act requires that a covered clearing agency establish, 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 the covered clearing agency in extreme but plausible market conditions.<sup>55</sup> Rule 17Ad-22(e)(7)(ii) under the Act requires that a cover clearing agency 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 the covered clearing agency has

<sup>52</sup> 12 U.S.C. 5464(b).

<sup>53</sup> 12 U.S.C. 5464(b).

<sup>54</sup> 17 CFR 240.17Ad-22(e)(7)(i) and (ii).

<sup>55</sup> 17 CFR 240.17Ad-22(e)(7)(i).

payment obligations owed to its clearing members.<sup>56</sup>

As described above, the changed proposed in the Advance Notice would help strengthen NSCC's ability to maintain sufficient liquid resources to complete end-of-day settlement in the event of the Member default by allowing NSCC to calculate and collect, when applicable, supplemental liquidity deposits every business day, or on an intraday basis, from those Members that pose the largest liquidity exposures to NSCC on that day. These resources would be available to NSCC to complete end-of-day settlement in the event of the default of a Member. Moreover, the Commission has reviewed and considered the impact study results provided by NSCC comparing 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,<sup>57</sup> and finds that these results generally indicated that the proposal would continue allow NSCC to meet its regulatory liquidity obligations.

In addition, deposits made to satisfy supplemental liquidity deposit obligations are currently and will continue to be required to be made as cash deposits, which will 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 NSCC's Clearing Agency Investment Policy.<sup>58</sup> Therefore, supplemental liquidity deposits would continue to be considered a qualifying liquid resource, as defined by Rule 17Ad-22(a)(14),<sup>59</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),<sup>60</sup> as required by Rule 17Ad-22(e)(7)(ii).<sup>61</sup>

Accordingly, the Commission finds that implementation of the proposed amendments to supplemental liquidity

deposits would be consistent with Rule 17Ad-22(e)(7)(i) and (ii) under the Exchange Act.<sup>62</sup>

#### IV. Conclusion

*It is therefore noticed*, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission *does not object* to Advance Notice (SR-NSCC-2021-801) and that NSCC is *authorized* to implement the proposed change as of the date of this notice or the date of an order by the Commission approving proposed rule change SR-NSCC-2021-002, whichever is later.

By the Commission.

**J. Matthew DeLesDernier**,

*Assistant Secretary*.

[FR Doc. 2021-09788 Filed 5-7-21; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91753; File No. SR-MRX-2021-05]

#### Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Fee Schedule To Establish Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

May 4, 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 April 21, 2021, Nasdaq MRX, LLC ("MRX" or "Exchange") 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.

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

The Exchange proposes to adopt a fee schedule to establish fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>3</sup>

<sup>62</sup> 17 CFR 240.17Ad-22(e)(7).

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

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

<sup>3</sup> Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in Rule General 7 (Consolidated Audit Trail Compliance) (MRX General 7 incorporates The Nasdaq Stock Market LLC General 7 by reference).

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/mrx/rules>, 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 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

Under the CAT NMS Plan, the Operating Committee of the Consolidated Audit Trail, LLC ("Company") ("Operating Committee") has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants.<sup>4</sup> The Operating Committee has filed with the SEC a proposal to amend the CAT NMS Plan to implement a revised funding model for the CAT ("CAT Funding Model") and to establish a fee schedule for Participant CAT fees ("Proposed CAT Fee Plan Amendment").<sup>5</sup> The Proposed CAT Fee Plan Amendment describes the CAT Funding Model in detail, including the proposal to charge Industry Members CAT fees. The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any CAT fees applicable to Industry Members that the Operating Committee approves.<sup>6</sup> Accordingly, the purpose of this proposed rule change is to implement the required fee schedule provisions for CAT fees applicable to Industry Members that are MRX members in accordance with the CAT Funding Model. The fee schedule provisions will become operative upon

<sup>4</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>5</sup> See Securities Exchange Act Release No. 91555 (April 14, 2017), 86 FR 21050 (April 21, 2021) ("Proposed CAT Fee Plan Amendment").

<sup>6</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>56</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. 17 CFR 240.17Ad-22(a)(14).

<sup>57</sup> See *supra* note 30 and accompanying text.

<sup>58</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>59</sup> 17 CFR 240.17Ad-22(a)(14).

<sup>60</sup> 17 CFR 240.17Ad-22(e)(7)(i).

<sup>61</sup> 17 CFR 240.17Ad-22(e)(7)(ii).