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 emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: David B. Golub, *legal@golubcapital.com,* and Steven B. Boehm, *stevenboehm@eversheds-sutherland.com.*

FOR FURTHER INFORMATION CONTACT: Shayna Gilmore, Senior Counsel, or Kyle R. Ahlgren, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended and restated application, dated July 26, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01818 Filed 1–29–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99427; File No. SR–OCC–2023–801]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Amendment No. 2 to Advance Notice Relating to The Options Clearing Corporation's Concerning Modifications to the Amended and Restated Stock Options and Futures Settlement Agreement Between The Options Clearing Corporation and the National Securities Clearing Corporation

January 24, 2024.

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'') [1] and Rule 19b–4(n)(1)(i) [2] of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[3] notice is hereby given that on January 23, 2024, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') this amendment (''Amendment No. 2'') to an advance notice as described in Items I, II and III below, which Items have been prepared primarily by OCC. 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 Amendment No. 2 to the advance notice SR–OCC–2023–801 is submitted by OCC to: (1) modify the Amended and Restated Stock Options and Futures Settlement Agreement dated August 5, 2017 between OCC and National Securities Clearing Corporation (''NSCC,'' and together with OCC, the ''Clearing Agencies'') (''Existing Accord'') [4] to permit OCC to elect to make a cash payment to NSCC following the default of a common clearing participant that would cause NSCC's central counterparty trade guaranty to attach to certain obligations of that participant and to make certain related revisions to OCC By-Laws, OCC Rules,[5] OCC's Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description and OCC's Liquidity Risk Management Framework (''Phase 1'') and (2) to improve information sharing between the Clearing Agencies to facilitate the upcoming transition to a T+1 standard securities settlement cycle and allow OCC, after the compliance date under amended Exchange Act Rule 15c6–1(a), to provide certain assurances to NSCC prior to the default of a common clearing participant that would enable NSCC to begin processing E&A/Delivery Transactions (defined below) before the central counterparty trade guaranty attaches to certain obligations of that participant (''Phase 2'').[6] This Amendment No. 2 would amend and replace the Initial Filing and Amendment No. 1 in their entirety.

The proposed changes are included in Exhibits 5A and 5B and confidential Exhibits 5C, 5D, and 5E of Amendment No. 2 to File No. SR–OCC–2023–801. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text.

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

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

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

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

Description of Proposed Change

Background

OCC is filing this advance notice to (1) modify the Existing Accord between OCC and NSCC to permit OCC to elect to make a cash payment to NSCC following the default of a common clearing participant that would cause NSCC's central counterparty trade guaranty to attach to certain obligations of that participant and to make certain related revisions to OCC By-Laws, OCC Rules, OCC's Comprehensive Stress

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] The Existing Accord was previously approved by the Commission. *See* Securities Exchange Act Release Nos. 81266, 81260 (July 31, 2017) (File Nos. SR–NSCC–2017–007; SR–OCC–2017–013), 82 FR 36484 (Aug. 4, 2017).

[5] OCC By-Laws are *available at https://www.theocc.com/getmedia/3309eceb-56cf-48fc-b3b3-498669a24572/occ_bylaws.pdf* and OCC Rules are *available at https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf.*

[6] OCC initially filed an advance notice concerning the proposed Phase 1 changes on August 10, 2023. *See* Securities Exchange Act Release No. 98214 (Aug. 24, 2023), 88 FR 59988 (Aug. 30, 2023) (File No. SR–OCC–2023–801) (''Initial Filing''). OCC subsequently submitted a partial amendment (''Amendment No. 1'') to clarify the proposed implementation plan for the Initial Filing *available at https://www.theocc.com/getmedia/fb30a875-2438-4b2d-bb79-3ff364b6796b/SR-OCC-2023-801-Partial-Amendment-No-1.pdf.* NSCC also has filed a proposed rule change with the Commission in connection with this proposal. *See* Securities Exchange Act Release No. 98213 (Aug. 24, 2023), 88 FR 59968 (Aug. 30, 2023) (File No. SR–NSCC–2023–007); Securities Exchange Act Release No. 98930 (Nov. 14, 2023), 88 FR 80790 (Nov. 20, 2023) (Partial Amendment No. 1 to File No. SR–NSCC–2023–007).

Testing & Clearing Fund Methodology, and Liquidity Risk Management Description and OCC's Liquidity Risk Management Framework for Phase 1 and (2) improve information sharing between the Clearing Agencies to facilitate the upcoming transition to a T+1 standard securities settlement cycle and allow OCC, after the compliance date under amended Exchange Act Rule 15c6–1(a), to provide certain assurances to NSCC prior to the default of a common clearing participant that would enable NSCC to begin processing E&A/Delivery Transactions before the central counterparty trade guaranty attaches to certain obligations of that participant for Phase 2.

i. Executive Summary

NSCC is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, including options that contemplate the physical delivery of equities cleared by NSCC in exchange for cash (''physically settled'' options).[7] OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise/assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations. NSCC and OCC maintain a legal agreement, generally referred to by the parties as the ''Accord'' agreement, that governs the processing of such physically settled options and futures cleared by OCC that result in settlement obligations in underlying equity securities to be cleared by NSCC (*i.e.,* the Existing Accord). The Existing Accord establishes terms under which NSCC accepts for clearing certain securities transactions that result from the exercise and assignment of relevant options contracts and the maturity of futures contracts that are cleared and settled by OCC.[8] It also establishes the time when OCC's settlement guaranty in respect of those transactions ends and NSCC's settlement guaranty begins.

The Existing Accord allows for a scenario in which NSCC could choose not to guarantee the settlement of such securities arising out of E&A/Delivery Transactions. Specifically, NSCC is not obligated to guarantee settlement until its member has met its collateral requirements at NSCC. If NSCC chooses not to guarantee settlement, OCC would engage in an alternate method of settlement outside of NSCC. This scenario presents two primary problems. First, the cash required for OCC and its Clearing Members in certain market conditions to facilitate settlement outside of NSCC could be significantly more than the amount required if NSCC were to guarantee the relevant transactions. This is because settlement of the transactions in the underlying equity securities outside of NSCC would mean that they would no longer receive the benefit of netting through the facilities of NSCC. In such a scenario, the additional collateral required from Clearing Members to support OCC's continuing settlement guarantee would also have to be sufficiently liquid to properly manage the risks associated with those transactions being due on the second business day following the option exercise or the relevant futures contract maturity date.

Based on an analysis of scenarios using historical data where it was assumed that OCC could not settle transactions through the facilities of NSCC, the worst-case outcome resulted in extreme liquidity demands of over $300 billion for OCC to effect settlement via an alternative method, *e.g.,* by way of gross broker-to-broker settlement, as discussed in more detail below. OCC Clearing Members, by way of their contributions to the OCC Clearing Fund, would bear the brunt of this demand. Furthermore, there is no guarantee that OCC Clearing Members could fund the entire amount of any similar real-life scenarios. By contrast, projected Guaranty Substitution Payments, defined below, identified during the study ranged from approximately $419 million to over $6 billion, also as discussed in more detail below.

The second primary problem relates to the significant operational complexities if settlement occurs outside of NSCC. More specifically, netting through NSCC reduces the volume and value of settlement obligations. For example, in 2022 it is estimated that netting through NSCC's continuous net settlement (''CNS'') accounting system[9] reduced the value of CNS settlement obligations by approximately 98% or $510 trillion from $519 trillion to $9 trillion. If settlement occurred outside of NSCC, on a broker-to-broker basis between OCC Clearing Members, for example, shares would not be netted and Clearing Members would have to coordinate directly with each other to settle the relevant transactions. The operational complexities and uncertainty associated with alternate means of settlement would impact every market participant involved in a settlement of OCC-related transactions.

To address these problems, the Clearing Agencies are proposing certain changes as part of Phase 1 to amend and restate the Existing Accord and make related changes to their respective rules that would allow OCC to elect to make a cash payment (the ''Guaranty Substitution Payment'' or ''GSP'') to NSCC following the default of a Common Member[10] that would cause NSCC to guarantee settlement of that Common Member's transactions and, therefore, cause those transactions to be settled through processing by NSCC. In connection with this proposal, OCC also would enhance its daily liquidity stress testing processes and procedures to account for the possibility of OCC making such a payment to NSCC in the event of a Common Member default. By making these enhancements to its stress testing, OCC could include the liquid resources necessary to make the payment in its resource planning. The Clearing Agencies believe that by NSCC accepting such a payment from OCC, the operational efficiencies and reduced costs related to the settlement of transactions through NSCC would limit market disruption following a Common Member default because settlement through NSCC following such a default would be less operationally complex and would be expected to require less liquidity and other collateral from market participants than the processes available to OCC for closing out positions. Additionally, proposed enhancements by OCC to its liquidity stress testing would add assurances that

[7] The term ''physically-settled'' as used throughout the OCC Rules refers to cleared contracts that settle into their underlying interest (*i.e.,* options or futures contracts that are not cash-settled). When a contract settles into its underlying interest, shares of stock are sent, *i.e.,* delivered, to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option and maturity in the case of a future.

[8] Under the Existing Accord, such options and futures are defined as ''E&A/Delivery Transactions,'' which refers to ''Exercise & Assignment Delivery Transactions.''

[9] *See* Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation) of the NSCC Rules. *See* NSCC's Rules, *available at https://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[10] A firm that is both an OCC Clearing Member and an NSCC Member or is an OCC Clearing Member that has designated an NSCC Member to act on its behalf is referred to herein as a ''Common Member.'' The term ''Clearing Member'' as used herein has the meaning provided in OCC's By-Laws. *See* OCC's By-Laws, *supra,* note 5. The term ''Member'' as used herein has the meaning provided in NSCC's Rules. *See* NSCC's Rules, *supra* note 9.

OCC could make such a payment in the event of a Common Member default. The Clearing Agencies believe that their respective clearing members and all other participants in the markets for which OCC provides clearance and settlement would benefit from OCC's ability to choose to make a cash payment to effect settlement through the facilities of NSCC. This change would provide more certainty around certain default scenarios and would blunt the financial and operational burdens market participants could experience in the case of most clearing member defaults.[11]

Finally, the Clearing Agencies are also proposing certain changes as part of Phase 2 that, if approved, would not be implemented until after the Commission shortens the standardized settlement cycle under Exchange Act Rule 15c6–1(a) from two days after the traded date (''T+2'') to one day after the trade date (''T+1''), which currently is set for May 28, 2024. The Phase 2 changes would address the operational realities concerning the Accord that will result from the Commission's adoption and implementation of a new standard settlement cycle of T+1 pursuant to Rule 15c6–1(a) under the Act. The Phase 2 changes generally are designed to allow OCC to provide certain assurances with respect to OCC's ability to make a GSP in the event of a Common Member default to NSCC that would permit NSCC to begin processing Common Members' E&A/Delivery Transactions in a shortened settlement cycle prior to Guaranty Substitution occurring by introducing new or amended terms and setting out the processes associated therewith.

ii. Background

OCC acts as a central counterparty clearing agency for U.S.-listed options and futures on a number of underlying financial assets including common stocks, currencies and stock indices. In connection with these services, OCC provides the OCC Guaranty pursuant to its By-Laws and Rules. NSCC acts as a central counterparty clearing agency for certain equity securities, corporate and municipal debt, exchange traded funds and unit investment trusts that are eligible for its services. Eligible trading activity may be processed through NSCC's CNS system[12] or through its Balance Order Accounting system,[13] where all eligible compared and recorded transactions for a particular settlement date are netted by issue into one net long (buy), net short (sell) or flat position. As a result, for each day with activity, each Member has a single deliver or receive obligation for each issue in which it has activity at NSCC. In connection with these services, NSCC also provides the NSCC Guaranty pursuant to Addendum K of the NSCC Rules.

OCC's Rules provide that delivery of, and payment for, securities underlying certain exercised stock options and matured single stock futures that are physically settled are generally effected through the facilities of NSCC and are not settled through OCC's facilities.[14] OCC and NSCC executed the Existing Accord to facilitate, via NSCC's systems, the physical settlement of securities arising out of options and futures cleared by OCC. OCC Clearing Members that clear and settle physically settled options and futures transactions through OCC also are required under OCC's Rules[15] to be Members of NSCC or to have appointed or nominated a Member of NSCC to act on its behalf. As noted above, these firms are referred to as ''Common Members'' in the Existing Accord.

iii. Summary of the Existing Accord

The Existing Accord governs the transfer between OCC and NSCC of responsibility for settlement obligations that involve a delivery and receipt of stock in the settlement of physically settled options and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC (''E&A/Delivery Transactions''). It also establishes the time when OCC's settlement guarantee (the ''OCC Guaranty'') ends and NSCC's settlement guarantee (the ''NSCC Guaranty'')[16] begins with respect to E&A/Delivery Transactions. However, in the case of a Common Member default[17] NSCC can reject these settlement obligations, in which case the settlement guaranty would not transfer from OCC to NSCC and OCC would not have a right to settle the transactions through the facilities of NSCC. Instead, OCC would have to engage in alternative methods of settlement that have the potential to create significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members.[18] More specifically, this could involve broker-to-broker settlement between OCC Clearing Members.[19] This settlement method is operationally complex because it requires bilateral coordination directly between numerous Clearing Members rather than relying on NSCC to facilitate multilateral netting to settle the relevant settlement obligations. As described above, it also potentially could result in significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members because the transactions would not be netted through the facilities of NSCC. Alternatively, where NSCC accepts the E&A/Delivery Transactions from OCC, the OCC Guaranty ends and the NSCC Guaranty takes effect. The transactions are then netted through NSCC's systems, which allows settlement obligations for the same settlement date to be netted into a single deliver or receive obligation. This netting reduces the costs associated with securities transfers by reducing the number of securities movements required for settlement and further reduces operational and market risk. The benefits of such netting by NSCC may be significant with respect to the large volumes of E&A/Delivery Transactions processed during monthly options expiry periods.

Pursuant to the Existing Accord, on each trading day NSCC delivers to OCC a file that identifies the securities, including stocks, exchange-traded funds and exchange-traded notes, that are

[11] OCC provided its analysis of the financial impact of alternate means of settlement as confidential Exhibit 3A to this filing.

[12] *See* Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation) of the NSCC Rules, *supra* note 9.

[13] *See* Rule 8 (Balance Order and Foreign Security Systems) and Procedure V (Balance Order Accounting Operation) of the NSCC Rules, *supra* note 9.

[14] *See* Chapter IX of OCC's Rules (Delivery of Underlying Securities and Payment), *supra* note 5.

[15] *See* OCC Rule 901, *supra* note 5.

[16] *See* Addendum K and Procedure III of the NSCC Rules, *supra* note 9.

[17] A Common Member that has been suspended by OCC or for which NSCC has ceased to act is referred to as a ''Mutually Suspended Member.''

[18] For example, OCC evaluated certain Clearing Member default scenarios in which OCC assumed that NSCC would not accept the settlement obligations under the Existing Accord, including the default of a large Clearing Member coinciding with a monthly options expiration. OCC has estimated that in such a Clearing Member default scenario, the aggregate liquidity burden on OCC in connection with obligations having to be settled on a gross broker-to-broker basis could reach a significantly high level. For example, in January 2022, the largest gross broker-to-broker settlement amount in the case of a larger Clearing Member default would have resulted in liquidity needs of approximately $384,635,833,942. OCC provided the data and analysis as confidential Exhibit 3A to this filing.

[19] In broker-to-broker settlement, Clearing Member parties are responsible for coordinating settlement—delivery and payment—among themselves on a transaction-by-transaction basis. Once transactions settle, the parties also have an obligation to affirmatively notify OCC so that OCC can close out the transactions. If either one of or both of the parties do not notify OCC, the transaction would remain open on OCC's books indefinitely until the time both parties have provided notice of settlement to OCC.

eligible (1) to settle through NSCC and (2) to be delivered in settlement of (i) exercises and assignments of stock options cleared and settled by OCC or (ii) delivery obligations from maturing stock futures cleared and settled by OCC. OCC, in turn, delivers to NSCC a file identifying securities to be delivered, or received, for physical settlement in connection with OCC transactions.[20]

After NSCC receives the list of eligible transactions from OCC, and NSCC has received all required deposits to the NSCC Clearing Fund from all Common Members taking into consideration amounts required to physically settle the OCC transactions, the OCC Guaranty would end and the NSCC Guaranty would begin with respect to physical settlement of the eligible OCC-related transactions.[21] At this point, NSCC is solely responsible for settling the transactions.[22]

Each day, NSCC is required to promptly notify OCC at the time the NSCC Guaranty takes effect. If NSCC rejects OCC's transactions due to an improper submission [23] or if NSCC ''ceases to act'' for a Common Member,[24] NSCC's Guaranty would not take effect for the affected transactions pursuant to the NSCC Rules.

NSCC is required to promptly notify OCC if it ceases to act for a Common Member. Upon receiving such a notice, OCC would not continue to submit to NSCC any further unsettled transactions that involve such Common Member, unless authorized representatives of both OCC and NSCC otherwise consent. OCC would, however, deliver to NSCC a reversal file containing a list of all transactions that OCC already submitted to NSCC and that involve such Common Member. The NSCC Guaranty ordinarily would not take effect with respect to transactions for a Common Member for which NSCC has ceased to act, unless both Clearing Agencies agree otherwise. As such, NSCC does not have any existing contractual obligation to guarantee such Common Member's transactions. To the extent the NSCC Guaranty does not take effect, OCC's Guaranty would continue to apply, and, as described above, OCC would remain responsible for effecting the settlement of such Common Member's transactions pursuant to OCC's By-Laws and Rules.

As noted above, the Existing Accord does provide that the Clearing Agencies may agree to permit additional transactions for a Common Member default (''Defaulted NSCC Member Transactions'') to be processed by NSCC while subject to the NSCC Guaranty. This optional feature, however, creates uncertainty for the Clearing Agencies and market participants about how Defaulted NSCC Member Transactions may be processed following a Common Member default and also does not provide NSCC with the ability to collect collateral from OCC that it may need to close out these additional transactions. While the optional feature would remain in the agreement as part of this proposal, the proposed changes to the Existing Accord, as described below, could significantly reduce the likelihood that it would be utilized.

Proposed Phase 1 Changes

i. Proposed Changes to the Existing Accord

The proposed changes to the Existing Accord would permit OCC to make a cash payment, referred to as the ''Guaranty Substitution Payment'' or ''GSP,'' to NSCC. This cash payment could occur on either or both of the day that the Common Member becomes a Mutually Suspended Member and on the next business day. Upon NSCC's receipt of the Guaranty Substitution Payment from OCC, the NSCC Guaranty would take effect for the Common Member's transactions, and they would be accepted by NSCC for clearance and settlement.[25] OCC could use all Clearing Member contributions to the OCC Clearing Fund [26] and certain Margin Assets [27] of a defaulted Clearing Member to pay the GSP, as described in more detail below.

NSCC would calculate the Guaranty Substitution Payment as the sum of the Mutually Suspended Member's unpaid required deposit to the NSCC Clearing Fund (''Required Fund Deposit'') [28] and the unpaid Supplemental Liquidity Deposit [29] obligation that is attributable to E&A/Delivery Transactions. The proposed changes to the Existing Accord define how NSCC would calculate the Guaranty Substitution Payment.

More specifically, NSCC would first determine how much of the member's unpaid Clearing Fund requirement would be included in the GSP. NSCC would look at the day-over-day change in gross market value of the Mutually Suspended Member's positions as well as day-over-day change in the member's NSCC Clearing Fund requirements. Based on such changes, NSCC would identify how much of the change in the Clearing Fund requirement was attributable to E&A/Delivery Transactions coming from OCC. If 100 percent of the day-over-day change in the NSCC Clearing Fund requirement is attributable to activity coming from OCC, then the GSP would include 100 percent of the member's NSCC Clearing Fund requirement. If less than 100 percent of the change is attributable to activity coming from OCC, then the GSP would include that percent of the member's unpaid NSCC Clearing Fund requirement attributable to activity coming from OCC. NSCC would then determine the portion of the member's unpaid SLD obligation that is attributable to E&A/Delivery Transactions. As noted above, the GSP would be the sum of these two amounts. A member's NSCC Clearing Fund requirement and SLD obligation at NSCC are designed to address the credit and liquidity risks that a member poses to NSCC. The GSP calculation is

[20] Each day that both OCC and NSCC are open for accepting trades for clearing is referred to as an ''Activity Date'' in the Existing Accord. Securities eligible for settlement at NSCC are referred to collectively as ''Eligible Securities'' in the Existing Accord. Eligible securities are settled at NSCC through NSCC's CNS Accounting Operation or NSCC's Balance Order Accounting Operation.

[21] The term ''NSCC Clearing Fund'' as used herein has the same meaning as the term ''Clearing Fund'' as provided in the NSCC Rules. Procedure XV of the NSCC Rules provides that all NSCC Clearing Fund requirements and other deposits must be made within one hour of demand, unless NSCC determines otherwise, *supra* note 9.

[22] This is referred to in the Existing Accord as the ''Guaranty Substitution Time,'' and the process of the substitution of the NSCC Guaranty for the OCC Guaranty with respect to E&A/Delivery Transactions is referred to as ''Guaranty Substitution.''

[23] Guaranty Substitution by NSCC (discussed further below) does not occur with respect to an E&A/Delivery Transaction that is not submitted to NSCC in the proper format or that involves a security that is not identified as an Eligible Security on the then-current NSCC Eligibility Master File.

[24] Under NSCC's Rules, a default would generally be referred to as a ''cease to act'' and could encompass a number of circumstances, such as an NSCC Member's failure to make a Required Fund Deposit in a timely fashion. *See* NSCC Rule 46 (Restrictions on Access to Services), *supra* note 9. An NSCC Member for which it has ceased to act is referred to in the Existing Accord as a ''Defaulting NSCC Member.'' Transactions associated with a Defaulting NSCC Member are referred to as ''Defaulted NSCC Member Transactions'' in the Existing Accord.

[25] Acceptance of such transactions by NSCC would be subject to NSCC's standard validation criteria for incoming trades. *See* NSCC Rule 7, *supra* note 9.

[26] The term ''OCC Clearing Fund'' as used herein has the same meaning as the term ''Clearing Fund'' in OCC's By-Laws, *supra* note 5.

[27] The term ''Margin Assets'' as used herein has the same meaning as provided in OCC's By-Laws, *supra* note 5.

[28] The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules, *see supra* note 9.

[29] Under the NSCC Rules, NSCC collects additional cash deposits from those Members who would generate the largest settlement debits in stressed market conditions, referred to as ''Supplemental Liquidity Deposits'' or ''SLD.'' *See* Rule 4A of the NSCC Rules, *supra* note 9.

intended to assess how much of a member's obligations arise out of activity coming from OCC so that the amount paid by OCC is commensurate with the risk to NSCC of guarantying such activity.

To permit OCC to anticipate the potential resources it would need to pay the GSP for a Mutually Suspended Member, each business day, NSCC would provide OCC with (1) Required Fund Deposit and Supplemental Liquidity Deposit obligations, as calculated pursuant to the NSCC Rules, and (2) the gross market value of the E&A/Delivery Transactions and the gross market value of total Net Unsettled Positions (as such term is defined in the NSCC Rules). On options expiry days that fall on a Friday, NSCC would also provide OCC with information regarding liquidity needs and resources, and any intraday SLD requirements of Common Members. Such information would be delivered pursuant to the ongoing information sharing obligations under the Existing Accord (as proposed to be amended) and the Service Level Agreement (''SLA'') to which both NSCC and OCC are a party pursuant to Section 2 of the Existing Accord.[30] The SLA addresses specifics regarding the time, form, and manner of various required notifications and actions described in the Accord and also includes information applicable under the Accord.

NSCC and OCC believe the proposed calculation of the Required Fund Deposit portion of the GSP is appropriate because it is designed to provide a reasonable proxy for the impact of the Mutually Suspended Member's E&A/Delivery Transactions on its Required Fund Deposit. While impact study data did show that the proposed calculation could result in a GSP that overestimates or underestimates the Required Fund Deposit attributable to the Mutually Suspended Member's E&A/Delivery Transactions,[31] current technology constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member.[32]

Implementing the ability for OCC to make the GSP and cause the E&A/Delivery Transactions to be cleared and settled through NSCC would promote the ability of OCC and NSCC to be efficient and effective in meeting the requirements of the markets they serve. This is because data demonstrates that the expected size of the GSP would be smaller than the amount of cash that would otherwise be needed by OCC and its Clearing Members to facilitate settlement outside of NSCC. More specifically, based on a historical study of alternate means of settlement available to OCC from September 2021 through September 2022, in the event that NSCC did not accept E&A/Delivery Transactions, the worst-case scenario peak liquidity need OCC identified was $384,635,833,942 for settlement to occur on a gross broker-to-broker basis. OCC estimates that the corresponding GSP in this scenario would have been $863,619,056. OCC also analyzed several other large liquidity demand amounts that were identified during the study if OCC effected settlement on a gross broker-to-broker basis.[33] These liquidity demand amounts and the largest liquidity demand amount OCC observed of $384,635,833,942 substantially exceed the amount of liquid resources currently available to OCC.[34] By contrast, projected GSPs identified during the study ranged from $419,297,734 to $6,281,228,428. For each of these projected GSP amounts, OCC observed that the Margin Assets and OCC Clearing Fund contributions that would have been required of Clearing Members in these scenarios would have been sufficient to satisfy the amount of the projected GSPs.

To help address the current technology constraint that prohibits NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member, proposed Section 6(b)(i) of the Existing Accord and related Section 7(d) of the SLA would provide that with respect to a Mutually Suspended Member, either NSCC or OCC may require that the Required Fund Deposit portion of the GSP be re-calculated by calculating the Required Fund Deposit for the Mutually Suspended Member both before and after the delivery of the E&A/Delivery Transactions and utilize the precise amount that is attributable to that activity in the final GSP. If such a recalculation is required, the result would replace the Required Fund Deposit component of the GSP that was initially calculated. The SLD component of the GSP would be unchanged by such recalculation.

As the above demonstrates, the GSP is intended to address the significant collateral and liquidity requirements that could be required of OCC Clearing Members in the event of a Common Member default.

Allowing OCC to make a GSP payment also is intended to allow for settlement processing to take place through the facilities of NSCC to retain operational efficiencies associated with the settlement process. Alternative settlement means such as broker-to-broker settlement add operational burdens, because transactions would need to be settled individually on one-off bases. In contrast, NSCC's netting reduces the volume and value of settlement obligations that would need to be closed out in the market.[35] Because the clearance and settlement of obligations through NSCC's facilities following a Common Member default, including netting of E&A/Delivery Transactions with a Common Member's positions at NSCC, would avoid these potentially significant operational burdens for OCC and its Clearing Members, OCC and NSCC believe that the proposed changes would limit market disruption relating to a Common Member default. NSCC netting significantly reduces the total number of obligations that require the exchange of money for settlement. Allowing more activity to be processed through NSCC's netting systems would minimize risk associated with the close out of those transactions following the default of a Common Member.

Amending the Existing Accord to define the terms and conditions under which Guaranty Substitution may occur, at OCC's election, with respect to Defaulted NSCC Member Transactions after a Common Member becomes a Mutually Suspended Member would also provide more certainty to both the Clearing Agencies and market

[30] OCC provided a draft of the revised SLA to the Commission as confidential Exhibit 3C to this filing.

[31] The impact study was conducted at the Commission's request to cover a three-day period and reviewed the ten Common Members with the largest Required Fund Deposits attributable to the Mutually Suspended Member's E&A/Delivery Transactions. Over the 30 instances in the study, approximately 15 instances resulted in an underestimate of the Required Fund Deposit by an average of approximately $112,900,926, four instances where the proxy calculation was the same as the Required Fund Deposit, and eleven instances of an overestimate of the Required Fund Deposit by an average of approximately $59,654,583. *See* confidential Exhibit 3D to this filing for additional detail related to the referenced study.

[32] OCC and NSCC agreed that performing the necessary technology build during Phase 1 would delay the implementation of Phase 1 of this proposal. NSCC will incorporate those technology updates in connection with Phase 2 of this proposal.

[33] *See* confidential Exhibit 3A to this filing for additional detail related to the referenced study.

[34] As of September 30, 2023, OCC held approximately $12.37 billion in qualifying liquid resources. *See OCC Quantitative Disclosure,* July–September 2023, *available at https://www.theocc.com/risk-management/pfmi-disclosures.*

[35] CNS reduces the value of obligations that require financial settlement by approximately 98%, where, for example $519 trillion in trades could be netted down to approximately $9 trillion in net settlements.

participants generally about how a Mutually Suspended Member's Defaulted NSCC Member Transactions may be processed.

NSCC and OCC have agreed it is appropriate to limit the availability of the proposed provision to the day of the Common Member default and the next business day because, based on historical simulations of cease to act events involving Common Members, most activity of a Mutually Suspended Member is closed out on those days.[36] Furthermore, the benefits of netting through NSCC's systems would be reduced for any activity submitted to NSCC after that time.

To implement the proposed Phase 1 changes to the Existing Accord, OCC and NSCC propose to make the following changes.

Section 1—Definitions

First, new definitions would be added, and existing definitions would be amended in Section 1, which is the Definitions section.

The new defined terms would be as follows.

• The term ''Close Out Transaction'' would be defined to mean ''the liquidation, termination or acceleration of one or more exercised or matured Stock Options [37] or Stock Futures [38] contracts, securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, master netting agreements or similar agreements of a Mutually Suspended Member pursuant to OCC Rules 901, 1006 and 1101 through 1111 (including but not limited to Rules 1104 and 1107) and/or NSCC Rule 18.'' This proposed definition would make it clear that the payment of the Guaranty Substitution Payment and NSCC's subsequent acceptance of Defaulted NSCC Member Transactions for clearance and settlement are intended to fall within the ''safe harbors'' provided in the Bankruptcy Code,[39] the Securities Investor Protection Act,[40] and other similar laws.

• The term ''Guaranty Substitution Payment'' would be defined to mean ''an amount calculated by NSCC in accordance with the calculations set forth in Appendix A [to the Existing Accord (as proposed to be amended)], to include two components: (i) a portion of the Mutually Suspended Member's Required Fund Deposit deficit to NSCC at the time of the cease to act; and (ii) a portion of the Mutually Suspended Member's unpaid Supplemental Liquidity Deposit obligation at the time of the cease to act.''

• The term ''Mutually Suspended Member'' would mean ''any OCC Participating Member [41] that has been suspended by OCC that is also an NSCC Participating Member [42] for which NSCC has ceased to act.''

• The term ''Required Fund Deposit'' would have the meaning ''provided in Rule 4 of NSCC's Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.''

• The term ''Supplemental Liquidity Deposit'' would have the meaning ''provided in Rule 4A of NSCC's Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.''

The defined terms that would be amended in Section 1 of the Existing Accord are as follows.

• The definition for the term ''E&A/Delivery Transaction'' generally contemplates a transaction that involves a delivery and receipt of stock in the settlement of physically settled options and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC. The definition would be amended to make clear that it would apply in respect of a ''Close Out Transaction'' of a ''Mutually Suspended Member'' as those terms are proposed to be defined (described above).

• The definition for the term ''Eligible Securities'' generally contemplates the securities that are eligible to be used for physical settlement under the Existing Accord. The term would be modified to clarify that this may include, for example, equities, exchange-traded funds and exchange-traded notes that are underlying securities for options issued by OCC.

Section 6—Default by an NSCC Participating Member or OCC Participating Member

Section 6 of the Existing Accord provides that NSCC is required to provide certain notice to OCC in circumstances in which NSCC has ceased to act for a Common Member. Currently, Section 6(a)(ii) of the Existing Accord also requires NSCC to notify OCC if a Common Member has failed to satisfy its Clearing Fund obligations to NSCC, but for which NSCC has not yet ceased to act. In practice, this provision would trigger a number of obligations (described below) when a Common Member fails to satisfy its NSCC Clearing Fund obligations for any reason, including those due to an operational delay. Therefore, OCC and NSCC are proposing to remove the notification requirement under Section 6(a)(ii) from the Existing Accord. Under Section 7(d) of the Existing Accord, NSCC and OCC are required to provide each other with general surveillance information regarding Common Members, which includes information regarding any Common Member that is considered by the other party to be in distress. Therefore, if a Common Member has failed to satisfy its NSCC Clearing Fund obligations and NSCC believes this failure is due to, for example, financial distress and not, for example, due to a known operational delay, and NSCC has not yet ceased to act for that Common Member, such notification to OCC would still occur but would be done pursuant to Section 7(d) of the Existing Accord (as proposed to be amended), and not Section 6(a)(ii). Notifications under Section 6 of the Existing Accord (as proposed to be amended) would be limited to instances when NSCC has actually ceased to act

[36] OCC provided data regarding such events in confidential Exhibit 3B to this filing. The information contained therein includes the assumptions and timelines leading up to the declaration of a default for a Common Member and the anticipated timing of OCC's payment of the GSP.

[37] The term ''Stock Options'' is defined in the Existing Accord within the definition of ''Eligible Securities,'' and refers to options issued by OCC.

[38] The term ''Stock Futures'' is defined in the Existing Accord within the definition of ''Eligible Securities,'' and refers to stock futures contracts cleared by OCC.

[39] 11 U.S.C. 101 *et seq.,* including sections 362(b)(6), (7), (17), (25) and (27) (exceptions to the automatic stay), sections 546(e)–(g) and (j) (limitations on avoiding powers), and sections 555–556 and 559–562 (contractual right to liquidate, terminate or accelerate certain contracts).

[40] 15 U.S.C. 78aaa–lll, including section 78eee(b)(2)(C) (exceptions to the stay).

[41] The term ''OCC Participating Member'' is defined in the Existing Accord to mean ''(i) a Common Member; (ii) an OCC Clearing Member that is an 'Appointing Clearing Member' (as defined in Article I of OCC's By-Laws) and has appointed an Appointed Clearing Member that is an NSCC Member to effect settlement of E&A/Delivery Transactions through NSCC on the Appointing Clearing Member's behalf; (iii) an OCC Clearing Member that is an Appointed Clearing Member; or (iv) a Canadian Clearing Member.'' No changes are proposed to this definition.

[42] The term ''NSCC Participating Member'' is defined in the Existing Accord to mean ''(i) a Common Member; (ii) an NSCC Member that is an 'Appointed Clearing Member' (as defined in Article I of OCC's By-Laws); or (iii) [Canadian Depository for Securities Limited or ''CDS'']. For the avoidance of doubt, the Clearing Agencies agree that CDS is an NSCC Member for purposes of this Agreement.'' No changes are proposed to this definition.

for a Common Member pursuant to the NSCC Rules.[43]

Following notice by NSCC that it has ceased to act for a Common Member, OCC is obligated in turn to deliver to NSCC a list of all E&A/Delivery Transactions (excluding certain transactions for which Guaranty Substitution does not occur) involving the Common Member.[44] This provision would be amended to clarify that it applies in respect of such E&A/Delivery Transactions for the Common Member for which the NSCC Guaranty has not yet attached—meaning that Guaranty Substitution has not yet occurred.

As described above in the summary of the Existing Accord, where NSCC has ceased to act for a Common Member, the Existing Accord refers to the Common Member as the Defaulting NSCC Member and also refers to the relevant E&A/Delivery Transactions in connection with that Defaulting NSCC Member for which a Guaranty Substitution has not yet occurred as Defaulted NSCC Member Transactions.

If the Defaulting NSCC Member is also suspended by OCC, it would be covered by the proposed definition that is described above for a Mutually Suspended Member. For such a Mutually Suspended Member, the proposed changes in Section 6(b) would provide that NSCC, by a time agreed upon by the parties, would provide OCC with the amount of the Guaranty Substitution Payment as calculated by NSCC and related documentation regarding the calculation. The Guaranty Substitution Payment would be calculated pursuant to NSCC's Rules as that portion of the unmet Required Fund Deposit [45] and Supplemental Liquidity Deposit [46] obligations of the Mutually Suspended Member attributable to the Defaulted NSCC Member Transactions. By a time agreed upon by the parties,[47] OCC would then be required to either notify NSCC of its intent to make the full amount of the Guaranty Substitution Payment to NSCC or notify NSCC that it will not make the Guaranty Substitution Payment. If OCC makes the full amount of the Guaranty Substitution Payment, NSCC's guaranty would take effect at the time of NSCC's receipt of that payment and the OCC Guaranty would end.

The proposed changes would further provide that if OCC does not suspend the Common Member (such that the Common Member would therefore not meet the proposed definition of a Mutually Suspended Member) or if OCC elects to not make the full amount of the Guaranty Substitution Payment to NSCC, then all of the Defaulted NSCC Member Transactions would be exited from NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation, as applicable, and Guaranty Substitution would not occur in respect thereof. Therefore, NSCC would continue to have no obligation to guarantee or settle the Defaulted NSCC Member Transactions, and the OCC Guaranty would continue to apply to them pursuant to OCC's By-Laws and Rules.[48]

Proposed changes to the Existing Accord would also address the application of any Guaranty Substitution Payment by NSCC. Specifically, new Section 6(d) would provide that any Guaranty Substitution Payment made by OCC may be used by NSCC to satisfy any liability or obligation of the Mutually Suspended Clearing Member to NSCC on account of transactions involving the Mutually Suspended Clearing Member for which the NSCC Guaranty applies and to the extent that any amount of assets otherwise held by NSCC for the account of the Mutually Suspended Member (including any Required Fund Deposit or Supplemental Liquidity Deposit) are insufficient to satisfy its obligations related to transactions for which the NSCC Guaranty applies. Proposed changes to Section 6(d) would further provide for the return to OCC of any unused portion of the GSP. With regard to the portion of the Guaranty Substitution Payment that corresponds to a member's Supplemental Liquidity Deposit obligation, NSCC must return any unused amount to OCC within fourteen (14) days following the conclusion of NSCC's settlement, close-out and/or liquidation. With regard to the portion of the Guaranty Substitution Payment that corresponds to a Required Fund Deposit, NSCC must return any unused amount to OCC under terms agreed to by the parties.[49]

Other Proposed Changes as Part of Phase 1

Certain other technical changes are also proposed to the Existing Accord to conform it to the proposed changes described above. For example, the preamble and the ''whereas'' clauses in the Preliminary Statement would be amended to clarify that the agreement is an amended and restated agreement and to summarize that the agreement would be modified to contemplate the Guaranty Substitution Payment structure. Section 1(c), which addresses the terms in the Existing Accord that are defined by reference to NSCC's Rules and Procedures and OCC's By-Laws and Rules would be modified to state that such terms would have the meaning then in effect at the time of any transaction or obligation that is covered by the agreement rather than stating that such terms have the meaning given to them as of the effective date of the agreement. This change is proposed to help ensure that the meaning of such terms in the agreement will not become inconsistent with the meaning in the NSCC Rules and/or OCC By-Laws and Rules, as they may be modified through proposed rule changes with the Commission.

Technical changes would be made to Sections 3(d) and (e) of the Existing Accord to provide that those provisions would not apply in the event new Section 6(b) described above, is triggered. Section 3(d) generally provides that OCC will no longer submit E&A/Delivery Transactions to NSCC involving a suspended OCC Participating Member.[50] Similarly, Section 3(e) generally provides that OCC will no longer submit E&A/Delivery Transactions to NSCC involving an NSCC Participating Member [51] for which NSCC has ceased to act. A proposed change would also be made to Section 5 of the Existing Accord to modify a reference to Section 5 of Article VI of OCC's By-Laws to instead provide that the updated cross-reference should be to Chapter IV of OCC's Rules.

Section 5 would also be amended to clarify that Guaranty Substitution

[43] *See* Rule 46 (Restrictions on Access to Services) of the NSCC Rules, *supra* note 9.

[44] The section of the Existing Accord that addresses circumstances in which NSCC ceases to act and/or an NSCC Member defaults is currently part of Section 6(a). It would be re-designated as Section 6(b) for organizational purposes.

[45] The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules, *see supra* note 9.

[46] The Supplemental Liquidity Deposit is calculated pursuant to Rule 4A (Supplemental Liquidity Deposits) of the NSCC Rules, *see supra* note 9.

[47] The time by which OCC would be required to notify NSCC of its intent would be defined in the Service Level Agreement. As of the time of this filing, the parties intend to set that time as one hour after OCC's receipt of the calculated Guaranty Substitution Payment from NSCC.

[48] Under the current and proposed terms of the Existing Accord, NSCC would be permitted to voluntarily guaranty and settle the Defaulted NSCC Member Transactions.

[49] Such amounts would be returned to OCC as appropriate and in accordance with a Netting Contract and Limited Cross-Guaranty, by and among The Depository Trust Company, Fixed Income Clearing Corporation, NSCC and OCC, dated as of January 1, 2003, as amended.

[50] *See supra* note 41 defining OCC Participating Member.

[51] *See supra* note 42 defining NSCC Participating Member.

occurs when NSCC has received both the Required Fund Deposit and Supplemental Liquidity Deposit, as calculated by NSCC in its sole discretion, from Common Members. The addition of the collection of the Supplemental Liquidity Deposit to the definition of the Guaranty Substitution Time in this Section 5 would reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment (as described above) and would make this definition consistent with that agreement.

In Section 7 of the Existing Accord, proposed changes would be made to provide that NSCC would provide to OCC information regarding a Common Member's Required Fund Deposit and Supplemental Liquidity Deposit obligations, to include the Supplemental Liquidity Deposit obligation in this notice requirement, and additionally that NSCC would provide OCC with information regarding the potential Guaranty Substitution Payment for the Common Member. On an options expiration date that is a Friday, NSCC would, by close of business on that day, also provide to OCC information regarding the intra-day liquidity requirement, intra-day liquidity resources and intra-day calls for a Common Member that is subject to a Supplemental Liquidity Deposit at NSCC.

Finally, Section 14 of the Existing Accord would be modernized to provide that notices between the parties would be provided by email rather than by hand, overnight delivery service or first-class mail.

ii. Proposed Changes to OCC By-Laws and Rules as Part of Phase 1

General Description

OCC is also proposing certain changes to its By-Laws and Rules that are designed to complement the proposed changes described above regarding the Existing Accord. These proposed changes to the By-Laws and Rules are described below, and they generally cover the following four areas. First, the proposed changes would define Guaranty Substitution Payment. Second, the proposed changes would describe the circumstances under which OCC could make a Guaranty Substitution Payment to NSCC. Third, the proposed changes would specify what financial resources could be used by OCC to make the Guaranty Substitution Payment.[52] Fourth, the proposed changes to OCC's Comprehensive Stress Testing and Clearing Fund Methodology, and Liquidity Risk Management Description would outline enhanced stress testing incorporating the GSP and OCC's ability to call for additional resources from Clearing Members. OCC also is proposing changes to OCC's Liquidity Risk Management Framework to account for OCC's ability to make the GSP.

Article I—Definitions

OCC proposes to add ''Guaranty Substitution Payment'' as a new defined term under Article I of OCC's By-Laws, which is the Definitions section. The term ''Guaranty Substitution Payment'' would be defined to mean: ''a payment that may be made by [OCC] to [NSCC] under the terms of an agreement between them, as described in Rule 901, so that [NSCC] will not reject settlement obligations for CCC-eligible[53] securities that are directed by [OCC] for settlement through the facilities of [NSCC] on account of a Clearing Member that has been suspended, as described in Rule 1102, and for which [NSCC] has ceased to act.''

Chapter IX—Delivery of Underlying Securities and Payment

Certain changes are also proposed to Chapter IX of OCC's Rules. OCC proposes to add parenthetical language to the Introduction section of Chapter IX of OCC's Rules. It would specify that a Guaranty Substitution Payment could be made by OCC to NSCC in connection with OCC's general policy that to the extent a security to be delivered and received is CCC-eligible, OCC will direct the delivery and payment obligations to be settled through the facilities of NSCC where the obligations are physically-settled and arise out of the exercise of stock option contracts or the maturity of stock futures contracts.

Next, OCC proposes to delete certain provisions from Rule 901(b) regarding when a Guaranty Substitution occurs. Specifically, Rule 901(b) currently provides that unless otherwise agreed between OCC and NSCC, a Guaranty Substitution with respect to settlement obligations for CCC-eligible securities that settle ''regular way'' under NSCC's Rules and Procedures will occur if: (i) the applicable settlement obligations are reported to and are not rejected by NSCC; (ii) NSCC has not notified OCC that it has ceased to act for the relevant Clearing Member or Appointed Clearing Member; and (iii) the NSCC Clearing Fund requirements of the relevant Clearing Member or Appointed Clearing Member owing to NSCC, as determined in accordance with NSCC's Rules and Procedures, are received by NSCC. These considerations regarding when a Guaranty Substitution occurs are addressed under the terms of the Existing Accord, and they would continue to be relevant considerations regarding when a Guaranty Substitution occurs under the changes that OCC and NSCC are proposing to the Existing Accord. However, because additional considerations would be added to the Guaranty Substitution process in connection with the proposed ability for OCC in certain circumstances to make a Guaranty Substitution Payment to NSCC and also to eliminate the potential for a description of the Guaranty Substitution process in OCC's Rules to become inconsistent with the process that OCC and NSCC have agreed to in the Existing Accord, as it would be amended, OCC is proposing to delete the discussion of these considerations in Rule 901(b) in favor of instead simply cross referencing the terms of the agreement.[54]

In addition, OCC proposes to add a new paragraph to the end of Rule 901(b) to provide that pursuant to the proposed changes to the Existing Accord, OCC would be permitted to make a Guaranty Substitution Payment to NSCC. The proposed changes would also describe the circumstances in which OCC may make a Guaranty Substitution Payment in connection with settlement obligations of a suspended Clearing Member, and that the amount of the Guaranty Substitution Payment under the terms of the Existing Accord, as amended, would be the amount required by NSCC to satisfy its deficit(s) regarding such Clearing Member's ''Required Fund Deposit'' and ''Supplemental Liquidity Deposit'' as those terms are defined in NSCC's Rules

[52] OCC would be permitted to borrow from the Clearing Fund and margin of a suspended Clearing Member, over which OCC has a general lien, where that Clearing Member is a Mutually Suspended Member. The change would merely expand the circumstances under which OCC's current By-Laws and Rules permit OCC to borrow Clearing Fund and margin. The change would not affect the treatment of such borrowing under OCC's default waterfall that determines how OCC allocates losses against available financial resources. The Mutually Suspended Member's margin and Clearing Fund collateral would remain first in line to absorb losses.

[53] The term ''CCC-Eligible'' as used herein has the meaning provided in OCC's By-Laws, *supra* note 5.

[54] For purposes of the proposed rule change process under Exchange Act Section 19(b), the agreement is treated as a rule of a clearing agency under Exchange Act Section 3(a)(27) and therefore any proposed changes to it by OCC are subject to the related rule change process and public notice and comment. OCC therefore believes that addressing the terms in the agreement and cross-referencing the agreement in OCC Rule 901 would not deprive the Commission or the public of notice regarding any future proposed changes.

and Procedures.[55] The changes would provide that any amount of a Guaranty Substitution Payment that NSCC does not use pursuant to its Rules and Procedures would subsequently be returned to OCC under such terms and within such times as are agreed by OCC and NSCC. OCC believes that it is useful to include this description of the proposed process for the Guaranty Substitution Payment and the circumstances in which it may be made so that a user of OCC's publicly available By-Laws and Rules would have sufficient information to understand the existence of the Guaranty Substitution Payment mechanism, the general circumstances in which it may be made and the role that a Guaranty Substitution Payment would play in causing NSCC to accept obligations for CCC-eligible securities for clearance and settlement.

Chapters X and XI—Clearing Fund Contributions and Suspension of a Clearing Member

As generally described above, the proposed changes would also provide that OCC would be permitted to borrow from the OCC Clearing Fund, and also against certain Margin Assets, of a Clearing Member that has been suspended by OCC where that Clearing Member is a Mutually Suspended Member. To implement these changes, OCC is proposing the following amendments to OCC Rule 1006 and Rule 1104.

OCC Rule 1006 addresses the purpose and permitted uses of the OCC Clearing Fund. OCC proposes to make amendments to paragraphs (a) and (f) to permit OCC to utilize assets in the Clearing Fund as a liquidity resource in connection with making a Guaranty Substitution Payment. Currently, OCC Rule 1006(a) states the conditions for use of the OCC Clearing Fund. These provide that the OCC Clearing Fund may be used for borrowings pursuant to OCC Rule 1006(f) or to make good losses or expenses suffered by OCC including: (i) as a result of the failure of any Clearing Member to discharge duly any obligation on or arising from any confirmed trade accepted by OCC, (ii) as a result of the failure of any Clearing Member (including any Appointed Clearing Member) or of CDS (Canada's national securities depository) to perform its obligations under any contract or obligation issued, undertaken, or guaranteed by OCC or in respect of which OCC is otherwise liable, (iii) as a result of the failure of any Clearing Member to perform any of its obligations to OCC in respect of the stock loan and borrow positions of such Clearing Member, (iv) in connection with any liquidation of a Clearing Member's open positions, (v) in connection with protective transactions effected for the account of OCC pursuant to Chapter XI of OCC's Rules (delivery of underlying securities and payment), (vi) as a result of the failure of any Clearing Member to make any other required payment or render any other required performance or (vii) as a result of the failure of any bank, securities or commodities clearing organization, or investment counterparty, to perform its obligations to OCC for certain specified reasons.[56]

OCC proposes to renumber clauses (iii) through (vii) in paragraph (a) as (iv) through (viii), and to insert as new clause (iii) a provision that the OCC Clearing Fund may be used ''regarding any Guaranty Substitution Payment that [OCC] may make to [NSCC] under an agreement between them, as described in [OCC] Rule 901, so that [NSCC] will not reject settlement obligations for CCC-eligible securities involving a Clearing Member for which [NSCC] has ceased to act and that [OCC] directs to [NSCC] for settlement through its facilities.'' [57] OCC also proposes to add parenthetical language to paragraphs (f)(1)(A) and (f)(2)(A)(ii) to further clarify that contributions to the OCC Clearing Fund may be borrowed by OCC for use in connection with making a Guaranty Substitution Payment to NSCC. Any borrowing from the OCC Clearing Fund by OCC to make a Guaranty Substitution Payment to NSCC would be subject to the existing terms of OCC Rule 1006(f)(3) that provide that irrespective of how any such borrowings from the OCC Clearing Fund are applied by OCC, the borrowing for a period not to exceed thirty (30) days will not be deemed to result in charges against the OCC Clearing Fund under OCC's default waterfall for allocating actual losses. For purposes of determining whether a loss resulting from a Guaranty Substitution Payment has occurred, OCC Rule 1006(f)(3) would be amended to provide that the Guaranty Substitution Payment is deemed to be repaid by OCC at such time as under the Accord that it is NSCC's obligation to return any portion of the Guaranty Substitution Payment that NSCC does not use pursuant to its rules. If, subsequent to the borrowing, OCC determines that the borrowing represents an actual loss or all or any part of the borrowing remains outstanding after thirty (30) days (or on the first Business Day thereafter if the thirtieth calendar day is not a Business Day) then the amount of OCC Clearing Fund assets used in the outstanding borrowing would be an actual loss that OCC would be required to immediately allocate under its By-Laws and Rules.[58] As noted above, losses resulting from the borrowing of Clearing Fund or Margin Assets as a liquidity resource to facilitate OCC making a Guaranty Substitution Payment would be allocated in the same sequence as any other losses charged to the default waterfall.

Consistent with these changes to permit OCC to use the OCC Clearing Fund as a borrowing resource to make a Guaranty Substitution Payment to NSCC, OCC is also proposing similar changes to OCC Rule 1104 that would permit OCC to borrow certain Margin Assets of a Clearing Member that has been suspended by OCC where that Clearing Member is a Mutually Suspended Member and OCC has a general lien [59] over the Margin Assets.

Specifically, OCC proposes to add a new paragraph (g) to OCC Rule 1104 that would provide that OCC may use specified Margin Assets of a suspended Clearing Member as a borrowing in order to use such borrowed Margin Assets to make a Guaranty Substitution Payment to NSCC. OCC would be permitted to use Margin Assets from the following accounts of a suspended Common Member: firm lien account and firm non-lien account; separate Market-Maker's account; combined Market-Maker's account; and JBO Participants' account.[60] OCC is not proposing at this time to have authority to borrow Margin Assets from other types of accounts over

[55] *See* NSCC Rules 4 (defining ''Required Fund Deposit'') and 4A (defining ''Supplemental Liquidity Deposit''), *supra* note 9.

[56] The terms ''Clearing Member'' and ''Appointed Clearing Member'' as used herein have the meanings provided in OCC's By-Laws, *supra* note 5.

[57] In connection with these amendments, the reference in Rule 1006(b) to ''clauses (i) through (vi) of paragraph (a)'' would be changed to ''clauses (i) through (vii) of paragraph (a).''

[58] If the defaulting OCC Clearing Member's Margin Assets and OCC Clearing Fund contribution were insufficient to cover the associated losses, OCC would next look to certain OCC financial resources that are available for that purpose (*e.g.,* OCC's corporate contribution and Clearing Fund contributions of non-defaulting OCC Clearing Members).

[59] Article I, Section 1.G.(1) of OCC's By-Laws states that the ''term 'general lien' means a security interest of [OCC] in all or specified assets in a Clearing Member account as security for all of the Clearing Member's obligations to [OCC] regardless of the source or nature of such obligations.'' *See* OCC By-Laws, *supra* note 5.

[60] The Clearing Member accounts referenced herein are described in subparagraphs (a), (b), (c) and (h) of Article VI, Section 3 of OCC's By-Laws. *See* OCC's By-Laws, *supra* note 5.

which OCC has a restricted lien [61] and for which the Margin Assets are security for the particular restricted lien accounts because of additional complexity that OCC believes would be associated with tracking NSCC's use of Margin Assets associated with those accounts and also due to certain regulatory requirements under Commission Rule 15c3–3 that apply to broker-dealer Clearing Members and prohibit the use of customer property of the broker-dealer to support non-customer activities.[62]

As with the terms that currently apply to any borrowing from the OCC Clearing Fund pursuant to OCC Rule 1006(f), new paragraph (g) in OCC Rule 1104 would further provide that Margin Assets borrowed by OCC to make a Guaranty Substitution Payment to NSCC would not be deemed to be charges against the margin assets for the relevant account(s) for up to thirty (30) days; however, if all or a part of such borrowing were to be determined by OCC, in its discretion, to represent an actual loss, or if all or a part of the borrowing were to remain outstanding after such thirty (30)-day period, OCC would consider the amount of margin assets used to support OCC's obligations under the outstanding borrowing or transaction as an actual loss and immediately allocate the loss in accordance with OCC's By-Laws and Rules.

OCC anticipates that in a scenario in which it would be permitted make a Guaranty Substitution Payment to NSCC under the proposed changes to the Existing Accord and OCC's By-Laws and Rules, OCC would generally expect to borrow from the Clearing Fund as a primary liquidity resource. OCC could also borrow Margin Assets of the suspended Clearing Member that is a Common Member under the proposed terms described above. OCC is not proposing changes that would require a specific borrowing sequence because OCC believes that it is more appropriate to preserve flexibility to borrow from the available OCC Clearing Fund or Margin Assets as OCC determines appropriate under the circumstances.

In addition, OCC proposes to specify in OCC Rule 1107(a)(1) that exercised option contracts and matured, physically-settled stock futures to which the suspended Clearing Member is a party may be settled in accordance with the terms of any agreement between OCC and NSCC governing the settlement of exercised option contracts and matured, physically-settled stock futures of a suspended Clearing Member. In such an event, settlement will be governed by and subject to the agreement between OCC and NSCC and the rules of NSCC.

The purpose of the proposed changes to create the Guaranty Substitution Payment mechanism is to provide OCC and NSCC with an additional default management tool to help manage liquidity and settlement risks that OCC believes would be presented to each covered clearing agency in connection with a Mutually Suspended Member. OCC believes that having the ability to make a Guaranty Substitution Payment to NSCC in regard to any unmet Required Fund Deposit or Supplemental Liquidity Deposit obligations of a Mutually Suspended Member would promote prompt and accurate clearance and settlement in the national system for the settlement of securities transactions by causing NSCC to guarantee certain securities settlement obligations that result from exercised options and matured futures contracts that are cleared and settled by OCC. In the following ways, OCC believes that this would be beneficial to and protective of OCC, NSCC, their participants, and the markets they serve.

First, OCC's ability to make the Guaranty Substitution Payment would ensure that the relevant securities settlement obligations would be accepted by NSCC for clearance and settlement and therefore the size of the related settlement obligations could be decreased from netting through NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation. Second, this outcome would avoid a scenario in which OCC's Guaranty would continue to apply and the settlement obligations would be settled on a broker-to-broker basis between OCC Clearing Members pursuant to the applicable provisions in Chapter IX of OCC's Rules. As noted above, OCC believes that such a broker-to-broker settlement scenario could result in substantial collateral and liquidity requirements for OCC Clearing Members. OCC believes that these potential collateral and liquidity consequences would be due to the lost benefit of netting of the settlement obligations through NSCC's facilities and also due to the short time (*i.e.,* the T+2 standard settlement cycle) between a rejection by NSCC of the settlement obligations for clearing and the associated settlement date on which settlement would be otherwise required to be made bilaterally by OCC Clearing Members. This scenario also raises the potential for procyclical liquidity demands on OCC Clearing Members and participants during stressed market conditions. Third, OCC will plan to size its liquidity resource requirements to reasonable expectations with a high probability of making a Guaranty Substitution Payment in order to facilitate the settlement of a Mutually Suspended Member's obligations through NSCC. Accounting for net liquidity demands from a Mutually Suspended Member's settlement obligations at the central counterparty-level enhances liquidity in the financial system and promotes the efficient use of capital by reducing the demand for liquidity associated with gross settlement of obligations and enabling the application of resources at both clearing agencies to satisfy the Member's obligation. Fourth, OCC believes that the potential for the size of the settlement obligations to be comparatively larger than the Guaranty Substitution Payment coupled with the short time remaining to settlement could also increase the risk of default by the affected OCC Clearing Members at a time when a Common Member has already been suspended. Therefore, OCC believes that the proposed changes to implement the ability for OCC to make a Guaranty Substitution Payment to NSCC would allow OCC to avoid these risks by causing NSCC to accept the relevant obligations arising from exercised options and matured futures cleared and settled by OCC, as it ordinarily would, and guarantee their settlement, upon OCC making a Guaranty Substitution Payment to NSCC in accordance with the revised Accord.

[61] Article I, Section 1.R.(8) of OCC's By-Laws states that the ''term 'restricted lien' means a security interest of [OCC] in specified assets (including any proceeds thereof) in an account of a Clearing Member with [OCC] as security for the Clearing Member's obligations to [OCC] arising from such account or, to the extent so provided in the By-Laws or Rules, a specified group of accounts that includes such account including, without limitation, obligations in respect of all confirmed trades effected through such account or group of accounts, and exercise notices assigned to such account or group of accounts.'' *See* OCC's By-Laws, *supra* note 5.

[62] For example, under the broker-dealer customer reserve account formula to SEC Rule 15c3–3 the broker-dealer takes a debit in the formula under Item 13 for margin that is ''required and on deposit with OCC for all option contracts written or purchased in customer accounts.'' This means that such margin in turn can be used by the broker-dealer Clearing Member as Margin Assets to support the securities customers' account at OCC.

iii. Proposed Changes to Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description and Liquidity Risk Management Framework as Part of Phase 1

Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description

OCC proposes to revise the OCC Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description to include the GSP in its liquidity risk management practices. Overall, the proposed changes would reflect that the GSP functions as an additional liquidity demand type at the Clearing Member Organization (''CMO'') Group level.[63]

OCC would include additional specifics to address the potential increased demand that the inclusion of the GSP may cause in its liquidity risk management practices in the Liquidity Risk Management section of the Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description. Specifically, OCC proposes to amend the Liquidity Demand for Positions Rejected by NSCC subsection, which describes the Existing Accord, including the scenario in which NSCC could choose not to guaranty certain securities settlement obligations arising out of transactions cleared by OCC. This subsection would be retitled as the Liquidity Demand Associated with NSCC Performance of Physical Settlement Activities subsection to more clearly describe its content and incorporate the GSP, as further detailed below. Consistent with the changes to the Existing Accord described above, OCC proposes to clarify that the Accord allows NSCC to reject such obligations if OCC elects to not make a GSP.

OCC proposes a new subsection, titled the Liquidity Demand GSP, to describe the GSP, which NSCC would calculate as defined in the proposed amendments to the Existing Accord. OCC would describe a GSP as a firm specific liquidity demand (*i.e.,* the amount of cash OCC needs to pay NSCC on behalf of the defaulting Common Member). OCC would describe the components of the GSP under the Accord. OCC would explain how it accounts for the liquidity demand associated with a potential GSP. Specifically, OCC would apply an amount to account for a potential GSP obligation for every day on which option expirations occur. This amount would be based on peak GSP amounts from the prior 12 months in a given expiration category for the specific CMO Group for each forecasted liquidity demand calculation. OCC will use a one-year lookback time period to determine the appropriate GSP amount to apply. The one-year lookback allows for the best like-to-like application of a historical GSP as there is a cyclical nature to option standard expirations with quarterly (*i.e.,* March, June, September, and December) and January generally being more impactful than non-quarterly expirations. The one-year lookback also allows behavior changes of a Clearing Member to be recognized within an annual cycle. OCC proposes to utilize a historical GSP based on current system capabilities and data that will be supplied by NSCC.

OCC would use the total amount of Clearing Fund and SLD deficits at NSCC in its calculation to account for its obligation. However, in the event of a default, OCC would be responsible for a proportionate share of both NSCC Clearing Fund deficits (which are analogous to OCC margin deficits) and SLDs that are attributable to OCC E&A activity transmitted to NSCC for settlement, whereas NSCC will be responsible for the portion of the Clearing Fund and SLD deficits associated with activity that NSCC clears that is not transmitted by OCC.

The amount of notional activity sent by OCC to NSCC informs the likelihood of a GSP. Namely, the potential amount of NSCC Clearing Fund and SLD deficits that are allocable to OCC increases as the amount of activity OCC sends to NSCC increases. Since not all types of expirations are the same with respect to the notional amount of activity sent by OCC to NSCC, OCC proposes to use five separate categories of expirations with potentially different GSP amounts to apply. Each day on which expirations occur would fall into one of five categories as follows:

- Standard Monthly Expiration: typically the third Friday of each month from the previous twelve months;
- Non-Standard Monthly Expiration Fridays (''End of Week Expirations''): the last business day of every week, typically a Friday, excluding the third Friday of each month from the previous twelve months;
- End of Month Expirations: the last trading day of every month from the previous twelve months;
- Expirations falling on Bank Holidays where Markets Are Open (''Bank Holiday Expirations''): days where banks are closed but the markets are open from the previous twelve months;[64]
- Remaining Expiration Days (''Daily Expirations''): All other days with an expiration from the previous twelve months that do not fall into any of the categories above (typically most Mondays through Thursdays) from the previous twelve months.

OCC believes these five categories are appropriate after an analysis of notional activity sent to NSCC by OCC.[65] More specifically, the standard Friday monthly expiration far exceeds the needs associated with any other category.[66] The remaining categories are intended to capture like time periods that will appropriately account for the GSP.

OCC would apply the peak GSP amounts from the prior twelve months in a given expiration category for the specific CMO Group for each forecasted liquidity demand calculation by adding the GSP amounts to the CMO Group's other forecasted liquidity demands for the relevant expiration day.[67] If a Clearing Member defaults, OCC may have to pay a GSP to NSCC on two successive days to facilitate the close-out of the defaulted Clearing Member's positions. To account for this possibility in its liquidity risk management process, OCC contemplates the payment of a GSP on expirations that result in settlements on the first and second days of the default management process. As described above, this GSP amount may

[63] A Clearing Member Group is composed of a set of affiliated OCC Clearing Members.

[64] The Bank Holiday category recognizes that for Veterans Day and Columbus Day, the equity and equity derivative markets are open for trading, but the banking system is closed for the day. Since the banking system is closed while the aforementioned markets are open, settlement at NSCC encompasses two days of equity trading and equity derivative E&A activity. As OCC is using NSCC deficit numbers without regard for allocation, there is a possibility of a significant outlying GSP requirement due to the settlement of two days of activity simultaneously. Prudence dictates retaining the capability to risk manage a day with such disparate characteristics differently. Additional supporting data in support of the creation of the Bank Holiday Expiration category is included as confidential Exhibit 3E to this filing.

[65] OCC provided its analysis of notional activity sent to NSCC by OCC in support of the creation of the five categories as confidential Exhibit 3E to this filing. This Exhibit 3E sets forth data related to OCC's liquidity stress testing, including Available Liquidity Resources, Minimum Cash Requirement thresholds, and/or liquidity breaches, for Sufficiency and Adequacy scenarios with and without the inclusion of the GSP.

[66] For example, the average notional transfer for Remaining Expiration Days is approximately 10% the size of Standard Expiration.

[67] As an example, if the applicable GSP is $100 and the (current) stressed liquidity demand is $150 for a Clearing Member Group, the result after the application of the GSP for that Clearing Member Group would be a combined liquidity requirement of $250 versus $150 currently.

serve to only increase liquidity demands.[68]

Furthermore, as stated in the new Liquidity Demand GSP subsection, OCC would apply a floor to certain expirations. At a minimum, the GSPs applied to the End of Week, End of Month, and Bank Holiday Expirations will be no lower than the peak of the Daily Expirations category. If a GSP pertaining to the End of Week, End of Month, and Bank Holiday Expiration category is higher than the peak of the Daily Expirations category, then OCC will apply that higher GSP. Standard Monthly Expirations will be floored by End of Week, End of Month, and Daily Expirations. If a GSP pertaining to any of these categories is higher than the Standard Monthly Expiration category, then OCC will apply that higher GSP. OCC would set out formulas representing the floors for the Standard Monthly, End of Week, End of Month, and Bank Holiday Expirations. Finally, OCC also proposes a minor change to clarify that it would attempt to effect alternative settlement if OCC elected not to make a GSP.[69]

Liquidity Risk Management Framework

OCC proposes changes to the Liquidity Risk Management Framework to incorporate the GSP. In the Liquidity Risk Identification section, OCC would specify that, in the situation where a member defaults immediately preceding, or during the expiration, of physically-settled E&A activity, OCC may elect to make a GSP to NSCC to compel NSCC to accept and process the E&A activity. If OCC elects to not make a GSP, OCC would complete settlement of the defaulted Clearing Member's E&A transactions through its current process. Relatedly, OCC would include a minor clarification to a footnote in this section to note that NSCC is not acting on behalf of a defaulting Clearing Member ''in this situation.''

Proposed Phase 2 Changes

On February 15, 2023, the Commission adopted amendments to Rule 15c6–1(a) under the Act[70] to shorten the standard settlement cycle for most broker-dealer transactions in securities from T+2 to T+1. In doing so, the Commission stated that a shorter settlement cycle ''can promote investor protection, reduce risk, and increase operational and capital efficiency.''[71] Moreover, the Commission stated that delaying the move to a shorter settlement cycle would ''allow undue risk to continue to exist in the U.S. clearance and settlement system''[72] and that it ''believes that the May 28, 2024, compliance date will help ensure that market participants have sufficient time to implement the changes necessary to reduce risk, such as risks associated with the potential for increases in settlement fails.''[73] The Phase 2 changes proposed herein serve those risk reduction objectives related to securities settlements by endeavoring to limit market disruption following a Common Member default. The proposed changes would allow OCC to provide certain assurances with respect to its ability to make a GSP in the event of a Common Member default to NSCC in a shortened settlement cycle, which would permit NSCC to begin processing E&A/Delivery Transactions prior to Guaranty Substitution occurring. This, in turn, would promote settlement through NSCC that is less operationally complex and would be expected to require less collateral and liquidity from market participants than if OCC engaged in the alternative settlement processes discussed above.

To address the operational realities concerning the Accord that will result from the Commission's adoption and implementation of a new standard settlement cycle of T+1 pursuant to Rule 15c6–1(a) under the Act, OCC and NSCC are proposing Phase 2 changes to further modify the Accord after the T+1 settlement cycle becomes effective. As described in greater detail below, the Phase 2 changes would allow the GSP and other changes that are part of the Phase 1 changes to continue to function appropriately and efficiently in the new T+1 settlement environment. Because of the phased approach, a separate mark-up is provided in confidential Exhibit 5C to this filing of the Phase 2 changes against the Accord as modified through the Phase 1 changes.

As described in more detail below, shortening the settlement cycle to T+1 will require NSCC to process stock settlement obligations arising from E&A Delivery Transactions one day earlier, *i.e.,* on the day after the trade date, than is currently the case. Moving processing times ahead by a full day will require processing to occur before the guaranty transfers from OCC to NSCC.[74] In this new T+1 processing environment, the Phase 2 changes would limit market disruption following a Common Member default because the Phase 2 changes would allow OCC to provide certain assurances with respect to its ability to make a GSP in the event of a Common Member default to NSCC that would permit NSCC to begin processing the defaulting Common Member's E&A/Delivery Transactions prior to Guaranty Substitution occurring. This, in turn, will promote settlement through NSCC that is less operationally complex and would be expected to require less collateral and liquidity from market participants than if OCC engaged in alternative settlement processes. The specific changes included in Phase 2 are described below. The changes would facilitate the continued ability of the GSP to function in an environment with a shorter settlement cycle. These changes are generally designed to allow OCC to provide certain assurances with respect to its ability to make a GSP in the event of a Common Member default to NSCC that would permit NSCC to begin processing E&A/Delivery Transactions prior to Guaranty Substitution occurring by introducing new or amended terms and setting out the processes associated therewith. All of the descriptions below explain the changes to the Accord as they would be made after the Accord has already been modified through prior implementation of the proposed Phase 1 changes.

Section 1—Definitions

First, new definitions would be added, and existing definitions would be amended or removed in Section 1.

The new defined terms would be as follows.

- The term ''GSP Monitoring Data'' would be defined to mean a set of margin and liquidity-related data points provided by NSCC on each Activity Date prior to the submission of E&A/Delivery Transactions by OCC to be used for informational purposes at OCC and NSCC.
- The term ''Final Guaranty Substitution Payment'' would be defined to mean an amount calculated by NSCC for each Settlement Date in accordance with Appendix A to the Accord, to include two components: (i) a portion of the NSCC Participating

[68] OCC provided its analysis of the impact of the GSP, including with respect to calls for collateral and liquidity demands as confidential Exhibit 3E to this filing.

[69] This clarification would maintain OCC's current process for settling transactions not processed through NSCC and does not represent the adoption of a new process or settlement method.

[70] 17 CFR 240.15c6–1.

[71] Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872, 13873 (Mar. 6, 2023).

[72] *Id.* at 13881.

[73] *Id.* at 13917.

[74] Given the reduction in the settlement cycle and existing processes that must be completed for settlement, it is OCC's understanding that the NSCC would not be able to safely compress its processing times further to allow processing to occur after the guaranty transfers from OCC to NSCC. OCC provided proposed processing timelines in confidential Exhibit 3G to this filing.

Member's [75] Required Fund Deposit deficit to NSCC calculated as a difference between the Required Fund Deposit deficit calculated on the NSCC Participating Member's entire portfolio and the Required Fund Deposit deficit calculated on the NSCC Participating Member's portfolio prior to submission of the E&A/Delivery Transactions; and (ii) the portion of the NSCC Participating Member's unpaid Supplemental Liquidity Deposit obligation attributable to the additional activity to be guaranteed.

• The term ''Historical Peak Guaranty Substitution Payment'' would be defined to mean the largest Final Guaranty Substitution Payment for an NSCC Participating Member and its affiliates that are also NSCC Participating Members over the 12 months immediately preceding the Activity Date, to include two components: (i) the Required Fund Deposit deficits associated with E&A/Delivery Transactions based on peak historical observations of the largest NSCC Participating Member and its affiliates that are also NSCC Participating Members; and (ii) the Supplemental Liquidity Deposit obligations associated with E&A/Delivery Transactions based on peak historical observations as calculated in accordance with applicable NSCC or OCC Rules and procedures.

• The term ''Qualifying Liquid Resources'' would be defined to have the meaning provided by Rule 17Ad-22(a)(14) of the Exchange Act, 17 CFR 240.17Ad–22(a)(14), or any successor Rule under the Exchange Act.

• The term ''Settlement Date'' would be defined to mean the date on which an E&A/Delivery Transaction is designated to be settled through payment for, and delivery of, the Eligible Securities underlying the exercised Stock Option [76] or matured Stock Future,[77] as the case may be.

• The term ''Weekday Expiration'' would be defined to mean any expiration for which the options expiration date occurs on a date other than a Friday or for which the Settlement Date is any date other than the first business date following a weekend.

• The term ''Weekend Expiration'' would be defined to mean any expiration for which the options expiration date occurs on a Friday or for which the Settlement Date is the first business date following a weekend.

[75] *See supra* note 42.

[76] *See supra* note 37.

[77] *See supra* note 38.

The defined term that would be removed in Section 1 is as follows.

• ''Guaranty Substitution Payment,'' which would be replaced by the new defined terms ''Final Guaranty Substitution Payment'' and ''Historical Peak Guaranty Substitution Payment.''

The defined terms that would be amended in Section 1 are as follows.

• The definition for the term ''Eligible Securities'' generally contemplates the securities that are eligible to be used for physical settlement under the Existing Accord. In Phase 2, the term will be modified to exclude any transactions settled through NSCC's Balance Order System and any security undergoing a voluntary corporate action that is being supported by NSCC's CNS system. This is because the processing of E&A/Delivery Transactions and potential reversals of such transactions under the Phase 2 changes would not be feasible under the anticipated operation of NSCC's CNS and Balance Order Accounting Operations under the shortened T+1 settlement cycle.

Section 3—Historical Peak Guaranty Substitution Payment

A new Section 3 would be added to describe the process by which OCC would send to NSCC evidence of sufficient funds to cover the Historical Peak Guaranty Substitution Payment. In particular, Section 3(a) would provide that on each Activity Date, at or before a time agreed upon by the Clearing Agencies (which may be modified on any given Activity Date with the consent of an authorized representative of OCC), NSCC will communicate to OCC the amount of the Historical Peak Guaranty Substitution Payment amount and the GSP Monitoring Data, which are to be used for informational purposes at OCC. The Historical Peak Guaranty Substitution Payment would reflect the largest GSP of the NSCC Participating Member and its affiliates over the prior twelve months and would be calculated based on the sum of the Required Fund Deposit deficits and Supplemental Liquidity Deposit associated with E&A/Delivery Transactions. Section 3(b) would provide that OCC would then submit to NSCC an acknowledgement of the Historical Peak Guaranty Substitution Payment amount and evidence that OCC has sufficient cash resources in the OCC Clearing Fund to cover the Historical Peak Guaranty Substitution Payment.

Section 3(c) would provide that if OCC does not provide NSCC with evidence within the designated time period that it has sufficient cash resources in the OCC Clearing Fund to cover the Historical Peak Guaranty Substitution Payment on the Activity Date, OCC will immediately contact NSCC to escalate discussions to discuss potential exposures and determine, among other things, whether OCC has other qualifying liquidity resources available to satisfy such amount.

As described above, the Historical Peak Guaranty Substitution Payment is designed to serve as a reasonable proxy for the largest potential Final Guaranty Substitution Payment. Its purpose is to allow OCC to provide evidence that it likely will be able to satisfy the Final Guaranty Substitution Payment in the event of a Common Member default, which will provide NSCC with reasonable assurances such that NSCC can begin processing E&A/Delivery Transactions upon receipt and prior to the Guaranty Substitution occurring, which will minimize the probability of reversals in a default event in light of the shortened settlement cycle. The Historical Peak Guaranty Substitution Payment amount also will provide OCC with information that will allow OCC to include the amount of a potential GSP in its liquidity resource planning.

Section 6—Final Guaranty Substitution Payment; OCC's Commitment

A new Section 6 would be added to provide the process by which NSCC would communicate the amount of, and OCC would commit to pay, the Final Guaranty Substitution Payment. In particular, Section 6(a) would provide that on each Settlement Date (or each Saturday for Weekend Expirations), by no later than the time(s) agreed upon by NSCC and OCC, NSCC will communicate to OCC the Final Guaranty Substitution Payment for each Common Member calculated by NSCC. NSCC would make such calculation according to a calculation methodology described in a new Appendix A to the Accord. This calculation would represent the sum of the Required Fund Deposit [78] and the Supplemental Liquidity Deposit [79] for the Common Member. As with the Phase 1 Accord, payment of the Final Guaranty Substitution Payment would be contingent on the mutual

[78] The Required Fund Deposit is the portion of the defaulted Common Member's Required Fund Deposit deficit to NSCC, calculated as a difference between the Required Fund Deposit deficit calculated on the entire portfolio and the Required Fund Deposit deficit calculated on the Common Member's portfolio prior to the submission of E&A/Delivery Transactions. The Phase 2 changes would refine the existing calculation methodology for the Required Fund Deposit in order to provide for a more accurate amount.

[79] If NSCC calculates a liquidity shortfall with respect to a defaulted Common Member, the Supplemental Liquidity Deposit is the portion of that shortfall that is attributable to the additional activity to be guaranteed.

suspension of the Common Member and payment of the Final Guaranty Substitution Payment would continue to be the means by which Guaranty Substitution may occur.

Section 6(b) would provide that, following NSCC's communication of the Final Guaranty Substitution Payment for each Common Member to OCC, and by no later than the agreed upon time, OCC must either (i) commit to NSCC that it will pay the Final Guaranty Substitution Payment in the event of a mutual suspension of a Common Member,[80] or (ii) notify NSCC that it will not have sufficient cash resources to pay the largest Final Guaranty Substitution Payment calculated for every Common Member. Section 6(b)(i) would further provide that for Weekday Expirations, OCC's submission of E&A/Delivery Transactions to NSCC would constitute OCC's commitment to pay the Final Guaranty Substitution Payment on the Settlement Date in the event of a mutual suspension of a Common Member.

Section 6(c) would provide that if OCC notifies NSCC that it will not have sufficient cash resources to pay the Final Guaranty Substitution Payment, NSCC may, in its sole discretion (i) reject or reverse all E&A/Delivery Transactions, or (ii) voluntarily accept E&A/Delivery Transactions subject to certain terms and conditions mutually agreed upon by NSCC and OCC.[81] Section 6(c) would also provide that any necessary reversals of E&A/Delivery Transactions shall be delivered by NSCC to OCC at such time and in such form as the Clearing Agencies agree.

Section 6(d) would provide that if, at any time after OCC has acknowledged the Historical Peak Guaranty Substitution Payment in accordance with proposed Section 3(b) of the Accord or committed to pay the Final Guaranty Substitution Payment in accordance with proposed Section 6(b) of the Accord, OCC has a reasonable basis to believe it will be unable to pay the Final Guaranty Substitution Payment, OCC will immediately notify NSCC.

[80] If OCC does not have sufficient cash to pay the Final GSP, then it must confirm for NSCC the availability of other qualifying liquid resources and the expected timeline for converting such resources to cash.

[81] Such terms and conditions may include, but would not be limited to, OCC's agreement to (i) pay NSCC available cash resources in partial satisfaction of the Final Guaranty Substitution Payment; (ii) collect or otherwise source additional resources that would constitute NSCC Qualifying Liquid Resources to pay the full Final Guaranty Substitution Payment amount; and/or (iii) reimburse NSCC for any losses associated with closing out such E&A/Delivery Transactions.

Section 8—Default by an NSCC Participating Member or OCC Participating Member

Section 6(b)(i), which would be renumbered as Section 8(b)(i), would be amended to reflect the modified use of the Final Guaranty Substitution Payment in the event of a mutual suspension of a Common Member. Section 8(b)(i) would also be revised to remove the ability for OCC or NSCC to require that the Guaranty Substitution Payment be re-calculated in accordance with an alternative methodology. This will not be necessary under the calculation methodology used in the Phase 2 changes because the proposed methodology would result in a more accurate calculation. Section 8(b)(i) would further amend the Accord by providing NSCC with discretion to voluntarily accept Defaulted NSCC Member Transactions and assume the guaranty for such transactions, subject to certain terms and conditions mutually agreed upon by NSCC and OCC. The only remaining change to the Guaranty Substitution process from its operation under the Accord would be the shortened time duration under which OCC would elect (by way of its commitment) to make the Final Guaranty Substitution Payment and the timing under which the Guaranty Substitution will be processed in order to function in a T+1 environment.

In particular, Section 8(b)(i) would provide that, with respect to a Mutually Suspended Member, if OCC has committed to make the Final Guaranty Substitution Payment, it will make such cash payment in full by no later than the agreed upon time(s). Upon NSCC's receipt of the full amount of the Final Guaranty Substitution Payment, NSCC's Guaranty would attach (and OCC's Guaranty will no longer apply) to the Defaulted NSCC Member Transactions. NSCC would have no obligation to accept a Final Guaranty Substitution Payment and attach the NSCC Guaranty to any Defaulted NSCC Member Transactions for more than the Activity Date on which it has ceased to act for that Mutually Suspended Member and one subsequent Activity Date. If NSCC does not receive the full amount of the Final Guaranty Substitution Payment in cash by the agreed upon time, the Guaranty Substitution Time would not occur with respect to the Defaulted NSCC Member Transactions and Section 8(b)(ii), described below, would apply. NSCC would, however, have discretion to voluntarily accept Defaulted NSCC Member Transactions and assume the guaranty for such transactions, subject to certain terms and conditions mutually agreed upon by NSCC and OCC.

Section 6(b)(ii), which would be renumbered as Section 8(b)(ii), would also be amended to reflect the modified use of the Final Guaranty Substitution Payment in the event OCC continues to perform or does not make the Final Guaranty Substitution Payment. In particular, Section 8(b)(ii) would add an additional criterion of OCC not satisfying any alternative agreed upon terms for Guaranty Substitution to reflect this as an additional option under the Phase 2 changes. As amended, Section 8(b)(ii) would provide that if OCC does not suspend an OCC Participating Member for which NSCC has ceased to act, OCC does not commit to make the Final Guaranty Substitution Payment, NSCC does not receive the full amount of the Final Guaranty Substitution Payment in cash by the agreed upon time, or OCC does not satisfy any alternative agreed upon terms for Guaranty Substitution, Guaranty Substitution with respect to all Defaulted NSCC Member Transactions for that Activity Date will not occur, all Defaulted NSCC Member Transactions for that Activity Date will be reversed and exited from NSCC's CNS accounting system, and NSCC will have no obligation to guaranty or settle such Defaulted NSCC Member Transactions. NSCC may, however, exercise its discretion to voluntarily accept the Defaulted NSCC Member Transactions, and assume the guaranty for such transactions, subject to certain agreed upon terms and conditions.

Section 8(b) would also be modified to provide for escalated discussion between the Clearing Agencies in the event of an intraday NSCC Cease to Act and/or NSCC Participating Member Default, particularly to confirm that OCC has sufficient qualifying liquid resources to pay the projected Final Guaranty Substitution Payment for the Defaulting NSCC Member's projected E&A/Delivery Transactions based on information provided in GSP Monitoring Data for such Defaulting NSCC Member.

Conforming changes would also be made to Section 8(d) to reflect the use of the new defined term ''Final Guaranty Substitution Payment.''

Other Proposed Changes as Part of Phase 2

Certain other technical changes are also proposed as part of the Phase 2 changes, including to conform the Accord to the proposed changes described above. For example, Section 9(c) would be revised regarding information sharing to reflect the

introduction of the Historical Peak and Final Guaranty Substitution Payments and the GSP Monitoring Data; Section 4(c)(ix) would be conformed to reflect the addition of ''Settlement Date'' as a defined term in Section 1; various sections would be renumbered and internal cross-references would be adjusted to reflect the addition of new sections proposed herein; correct current references throughout the Accord to ''NSCC Rules and Procedures'' would be changed to simply read ''the NSCC Rules;'' and various non-substantive textual changes would be made to increase clarity.

Section 4(a) would also be modified to reflect that the Eligibility Master Files referenced in that paragraph, which identify Eligible Securities to OCC, are described in the SLA between OCC and NSCC. Section 9(b) would be modified to include OCC's available liquidity resources, including Clearing Fund cash balances in the information OCC provides to NSCC, and to specify that information will be provided on each Activity Date at an agreed upon time and in an agreed upon form by the Clearing Agencies. Finally, Section 16(b) would be modified to provide the correct current delivery address information for NSCC.

The Phase 2 changes would also include an Appendix A that would describe in detail the calculation methodology for the Guaranty Substitution Payment. This would provide the detailed technical calculation to determine each of the Mutually Suspended Member's Required Fund Deposit deficit and liquidity shortfall to NSCC. The full text of Appendix A is filed confidentially with the Commission as Exhibit 5 to this filing.

Phase 2 Guaranty Substitution Process Changes

As described above, the Phase 2 changes would modify the Guaranty Substitution process to reflect the shortened time duration under which the Guaranty Substitution will be processed in order to function in a T+1 environment. Below is a description of how that process would operate. The actual process would be implemented pursuant to a modified SLA between the Clearing Agencies.[82] All times provided below are in Eastern Time and represent the latest time by which the specified action must occur, unless otherwise agreed by the Clearing Agencies.

Weekend Expirations: On Friday (the Activity Date), NSCC would provide OCC with the Historical Peak GSP amount by 8:00 a.m. By 5:00 p.m. on Friday, OCC must acknowledge the Historical Peak GSP and provide evidence of OCC's Clearing Fund cash resources sufficient to cover that amount, following which NSCC would provide the Eligibility Master File by 5:45 p.m. By 1:00 a.m. on Saturday, OCC would then provide NSCC with the E&A/Delivery Transactions file and by 8:00 a.m. NSCC would provide OCC with the Final GSP, which OCC must commit to pay by 9:00 a.m. in the event of a mutual suspension of a Common Member.[83] By 8:00 a.m. Monday (the Settlement Date), if a cease to act is declared over the weekend (or the later of 10:00 a.m. or one hour after the cease to act is declared if declared on Monday), OCC must pay the Final GSP if there has been a mutual suspension of a Common Member. Finally, by 1:00 p.m. on Monday, OCC must provide reversals for the defaulted member's E&A/Delivery Transactions if OCC has not satisfied (or will not satisfy) the Final GSP.

Weekday Expirations: On the Activity Date, NSCC would provide OCC with the Historical Peak GSP amount by 8:00 a.m. By 5:00 p.m. on the Activity Date, OCC must acknowledge the Historical Peak GSP and provide evidence of its cash resources in the OCC Clearing Fund sufficient to cover that amount, following which NSCC would provide the Eligibility Master File by 5:45 p.m. By 1:00 a.m. on the Settlement Date (the day after the Activity Date in the T+1 environment), OCC would then provide NSCC with the E&A/Delivery Transactions file, which also constitutes OCC's commitment to pay the Final GSP. By 8:00 a.m. NSCC would provide OCC with the Final GSP. By the later of 10:00 a.m. on the Settlement Date or one hour after a cease to act is declared, OCC must pay the Final GSP if there has been a mutual suspension of a Common Member. Finally, by 1:00 p.m. on the Settlement Date, OCC must provide reversals for the defaulted member's E&A/Delivery Transactions if OCC has not satisfied (or will not satisfy) the Final GSP.

For both Weekend Expirations and Weekday Expirations, Guaranty Substitution will take place only after the Common Members meet their start of day margin funding requirements at NSCC, if any. In a Common Member default event, the Guaranty Substitution will take place when OCC pays the Final GSP to NSCC.

The Clearing Agencies note that the Phase 2 changes described above are designed to change the process by which the GSP is implemented such that the use of the GSP as a mechanism to facilitate the acceptance of settlement obligations by NSCC can continue to operate within the condensed timing for clearance and settlement in a T+1 environment. However, the ultimate use of the GSP, its purpose, and its substantive import would remain consistent with the Phase 1 changes.

Proposed Liquidity Risk Management Framework Changes

OCC proposes changes to the Liquidity Risk Management Framework to incorporate the Phase 2 changes into its liquidity risk management practices. In the Contingency Funding Plan section, OCC would specify that it endeavors to maintain sufficient cash resources to cover its projected settlement demands. Projected settlement demands may include settlements associated with option exercise & assignment activity that create obligations for OCC under the Accord (*e.g.,* Final GSP, Historical Peak GSP). Final and Historical Peak GSP would be defined in the Definitions section. OCC proposes a footnote referencing the proposed Phase 1 changes to the Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description with respect to the Final GSP. Namely, to account for the liquidity demand associated with the potential payment of a Final GSP, OCC would include the peak amount of the entire actual NSCC Required Fund Deposit deficits and SLD start-of-day obligations, without regard to allocation between NSCC and OCC, specific to each CMO Group for the relevant type of expiration on a rolling twelve-month lookback. Moreover, OCC may require the deposit of cash by a Clearing Member pursuant to its current Rules if projected settlement demands exceed OCC liquidity resources available to make settlement in the event of a Clearing Member default.

OCC also proposes related and clarifying changes in the document. For example, OCC would include a minor clarifying change to the Liquidity Risk Identification section to define GSP as a firm-specific liquidity demand. OCC would also amend the Stress Testing

[82] OCC provided a draft of the SLA illustrating such changes to the Commission as confidential Exhibit 3F to this filing.

[83] If OCC does not have sufficient cash resources to pay the Final GSP and the Clearing Agencies are unable to reach an agreement on additional terms for NSCC to accept E&A/Delivery Transactions, OCC must submit a reversal file by 12:30 a.m. on Monday so that NSCC can remove the E&A/Delivery Transactions from CNS prior to the start of NSCC's overnight processing. *See* confidential Exhibit 3H to this filing for additional details on action deadlines and processing times.

and Liquidity Resource Sizing section to incorporate information pertaining to GSP obligations into the annual analysis presented to the Board on projected liquidity demands that OCC may face under a variety of scenarios.

Proposed By-Law Changes

OCC proposes to update its By-Laws to conform with the revised Accord. OCC proposes to remove a reference to Balance Order Accounting Operation to align with the exclusion of transactions settled through NSCC's Balance Order System under the amended definition of Eligible Securities in the Phase 2 Accord.

Implementation Framework

The proposed Phase 1 and Phase 2 changes will be implemented as follows:

- Phase 1: Within 120 days after the date OCC and NSCC receive all necessary regulatory approvals for these proposed changes to the Accord, OCC will implement all Phase 1 changes. OCC would announce the implementation date by an Information Memorandum posted to its public website at least seven days prior to implementation.
- Phase 2: On the compliance date with respect to the final T+1 amendments to Exchange Act Rule 15c6–1(a) established by the SEC, OCC will implement all Phase 2 changes, keep in place any applicable Phase 1 changes that carry over to Phase 2, and decommission all Phase 1 changes that do not apply to Phase 2.[84]

Anticipated Effect on and Management of Risk

OCC believes that the proposed changes would reduce the nature and level of risk presented by OCC because the purpose of the proposed changes to enhance its stress testing processes and create the Guaranty Substitution Payment mechanism is to provide OCC and NSCC with additional default management tools to help manage liquidity and settlement risks that OCC believes would be presented to each covered clearing agency in connection with a Mutually Suspended Member. As described above in the Phase 1 changes, OCC believes that having the ability to make a Guaranty Substitution Payment to NSCC in regard to any unmet Required Fund Deposit or Supplemental Liquidity Deposit obligations of a Mutually Suspended Member would promote prompt and accurate clearance and settlement in the national system for the settlement of securities transactions by causing NSCC to guarantee certain securities settlement obligations that result from exercised options and matured futures contracts that are cleared and settled by OCC. OCC further believes that enhancing its stress testing processes will help to ensure that it maintains the resources to make such a payment. The Phase 2 changes would also promote prompt and accurate clearance and settlement in the national system for the settlement of securities transactions because, as described above, they would facilitate implementation of the new settlement cycle and support the Commission's stated goal of implementing necessary risk reducing changes in connection with the move to T+1 settlement, currently set for May 28, 2024. The Phase 2 changes would further enable OCC to provide certain assurances that would permit NSCC to begin processing E&A/Delivery Transactions prior to guaranty substitution occurring—thereby promoting the continued effectiveness of the guaranty substitution process in an environment with a shorter settlement cycle. In the following ways, OCC believes that this proposal would be beneficial to and protective of OCC, NSCC, their participants, and the markets they serve.

First, OCC's ability to make the Guaranty Substitution Payment would ensure that the relevant securities settlement obligations would be accepted by NSCC for clearance and settlement and therefore the size of the related settlement obligations could be decreased from netting through NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation. Second, this outcome would avoid a scenario in which OCC's Guaranty would continue to apply and the settlement obligations would be settled on a broker-to-broker basis between OCC Clearing Members pursuant to the applicable provisions in Chapter IX of OCC's Rules. As noted above, OCC believes that such a broker-to-broker settlement scenario could result in substantial collateral and liquidity requirements for OCC Clearing Members. OCC believes that these potential collateral and liquidity consequences would be due to the lost benefit of netting of the settlement obligations through NSCC's facilities and also due to the short time between a rejection by NSCC of the settlement obligations for clearing and the associated settlement date on which settlement would be otherwise required to be made bilaterally by OCC Clearing Members. This scenario also raises the potential for procyclical liquidity demands on OCC Clearing Members and participants during stressed market conditions. Third, OCC will plan to size its liquidity resource requirements to reasonable expectations with a high probability of making a Guaranty Substitution Payment in order to facilitate the settlement of a Mutually Suspended Member's obligations through NSCC. Accounting for net liquidity demands from a Mutually Suspended Member's settlement obligations at the central counterparty-level enhances liquidity in the financial system and promotes the efficient use of capital by reducing the demand for liquidity associated with gross settlement of obligations and enabling the application of resources at both clearing agencies to satisfy the Member's obligation. Fourth, OCC believes that the potential for the size of the settlement obligations to be comparatively larger than the Guaranty Substitution Payment coupled with the short time remaining to settlement could also increase the risk of default by the affected OCC Clearing Members at a time when a Common Member has already been suspended. Therefore, OCC believes that the proposed changes to implement the ability for OCC to make a Guaranty Substitution Payment to NSCC would allow OCC to avoid these risks by causing NSCC to accept the relevant obligations arising from exercised options and matured futures cleared and settled by OCC, as it ordinarily would, and guarantee their settlement, upon OCC making a Guaranty Substitution Payment to NSCC in accordance with the revised Accord.

Consistency With the Payment, Clearing and Settlement Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[85] Section 805(a)(2) of the Clearing Supervision Act[86] also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[87] states

[84] If, due to the timing of regulatory approval, the implementation dates for Phase 1 and Phase 2 overlap, OCC would implement only the Phase 2 changes and Phase 1 changes that carry over to Phase 2.

[85] 12 U.S.C. 5461(b).

[86] 12 U.S.C. 5464(a)(2).

[87] 12 U.S.C. 5464(b).

that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

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

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Exchange Act in furtherance of these objectives and principles.[88] Rule 17Ad–22 requires registered clearing agencies, like OCC, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[89] Therefore, the Commission has stated [90] that it believes it is appropriate to review changes proposed in advance notices against Rule 17Ad–22 and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.[91]

OCC believes the proposed changes are consistent with Section 805(b)(1) of the Clearing Supervision Act [92] because they would promote the reduction of risks to OCC, its Clearing Members and the markets OCC serves. As described above in the Phase 1 changes, OCC believes that the proposed enhancements to its stress testing processes and having the ability to make a Guaranty Substitution Payment to NSCC with respect to any unmet obligations of a Mutually Suspended Member would promote the reduction of risk because it would ensure that OCC maintains sufficient liquidity resources and that the relevant securities settlement obligations would be accepted by NSCC for clearance and settlement and therefore the size of the related settlement obligations for both the Mutually Suspended Member and its assigned delivery counterparties could be decreased from netting through NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation. This would also avoid a scenario in which OCC's Guaranty would continue to apply and the settlement obligations would be settled on a broker-to-broker basis between OCC Clearing Members, which OCC believes could result in substantial collateral and liquidity requirements for OCC Clearing Members and that, in turn, could also increase a risk of default by the affected OCC Clearing Members at a time when a Common Member has already been suspended. Additionally, the Phase 2 changes would facilitate implementation of the new settlement cycle and support the Commission's stated goal of implementing necessary risk reducing changes in connection with the move to T+1 settlement. The Phase 2 changes would further enable OCC to provide certain assurances that would permit NSCC to begin processing E&A/Delivery Transactions prior to guaranty substitution occurring—thereby promoting the continued effectiveness of the guaranty substitution process in an environment with a shorter settlement cycle. For these reasons, OCC believes that the proposed changes: (i) are designed to promote robust risk management; (ii) are consistent with promoting safety and soundness; and (iii) are consistent with reducing systemic risks and promoting the stability of the broader financial system.

OCC believes that the proposed changes are also consistent with the SEC rules that apply to OCC as a covered clearing agency.[93] In particular, SEC Rule 17Ad–22(e)(20) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor and manage risks related to any link that OCC establishes with one or more other clearing agencies, financial market utilities, or trading markets.[94] As described in OCC's publicly available disclosure framework for financial market infrastructures,[95] the Existing Accord between OCC and NSCC is one such link. As described above, OCC believes (i) the proposed modifications to OCC's stress testing procedures that are designed to enhance its ability to call for additional liquidity resources, and (ii) the implementation of the ability for OCC to make a Guaranty Substitution Payment to NSCC in the relevant circumstances involving a Mutually Suspended Member would help manage the risks presented to OCC and its Clearing Members by the settlement link with NSCC because the Guaranty Substitution Payment would ensure that the relevant securities settlement obligations would be accepted by NSCC for clearance and settlement and therefore the size of the related settlement obligations could be decreased from netting through NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation.

For this same reason, OCC also believes that the proposed changes are consistent with the requirements of SEC Rules 17Ad–22(e)(3) and (7).[96] SEC Rule 17Ad–22(e)(3) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing, among other things, liquidity, credit and other risks that arise in or are borne by OCC.[97] SEC Rule 17Ad–22(e)(7) requires OCC, in relevant part, to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor and manage the liquidity risk that arises in or is borne by OCC and to, among other things, address foreseeable liquidity shortfalls that would not be covered by OCC's liquid resources.[98] As noted, OCC believes the proposed stress testing enhancements and the ability to make a Guaranty Substitution Payment to NSCC would allow OCC to better manage liquidity and credit risks related to the settlement link with NSCC by ensuring that the relevant securities settlement obligations would be accepted by NSCC for clearance and settlement. It would avoid a scenario in which OCC's Guaranty would continue to apply and the settlement obligations would be settled on a broker-to-broker basis between OCC Clearing Members, which OCC believes could result in substantial collateral and liquidity requirements for OCC Clearing Members that, in turn, could also increase a risk of default by the affected OCC Clearing Members, particularly in circumstances where the prior suspension of a Mutually Suspended Member relates to broader stress in the financial system. Moreover, the incorporation of the Guaranty Substitution Payment into OCC's liquidity risk management practices would enhance OCC's ability to maintain additional liquidity resources to effect the settlement of exercise and assignment activity in the event of a

[88] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (''Clearing Agency Standards''); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7 17 CFR 240.17Ad–22. See Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (''Clearing Agency Standards''); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016).

[89] 17 CFR 240.17Ad–22.

[90] *See, e.g.,* Exchange Act Release No. 89039, 85 FR at 36446.

[91] 12 U.S.C. 5464(b).

[92] 12 U.S.C. 5464(b)(1).

[93] 17 CFR 240.17Ad–22(a)(5).

[94] 17 CFR 240.17Ad–22(e)(20).

[95] *See* The Options Clearing Corporation Disclosure Framework for Financial Market Infrastructures, pg. 105, (2023), *available at https://www.theocc.com/risk-management/pfmi-disclosures.*

[96] 17 CFR 240.17Ad–22(e)(3), (7).

[97] 17 CFR 240.17Ad–22(e)(3).

[98] 17 CFR 240.17Ad–22(e)(7).

Common Member default, and therefore, potentially increase the promotion of market stability. Regarding the Phase 2 changes, OCC believes that the continued ability in a T+1 environment to make a Guaranty Substitution Payment to NSCC would allow OCC to better manage liquidity and credit risks related to the settlement link with NSCC by ensuring that the relevant securities settlement obligations would be accepted by NSCC for clearance and settlement.

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

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

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

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–OCC–2023–801 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR–OCC–2023–801. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–OCC–2023–801 and should be submitted on or before February 14, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[99]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01748 Filed 1–29–24; 8:45 am]

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[99] 17 CFR 200.30–3(a)(91).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99419; File No. SR–NASDAQ–2023–045]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the iShares Ethereum Trust Under Nasdaq Rule 5711(d), Commodity-Based Trust Shares

January 24, 2024.

On November 21, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the iShares Ethereum Trust under Nasdaq Rule 5711(d), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on December 11, 2023.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 25, 2024. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 10, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99081 (Dec. 5, 2023), 88 FR 85945.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).