in MSRB Rulemaking. In accordance with this policy, the Board has evaluated the potential impacts on competition of the proposed rule change, including in comparison to reasonable alternative regulatory approaches, relative to the baseline. The MSRB also considered other economic impacts of the proposed rule change and has addressed comments relevant to these impacts in other sections of this document. The MSRB does not believe that the proposed rule change will impose any additional burdens on competition, relative to the baseline, that are not necessary or appropriate in furtherance of the purposes of the Act. The MSRB notes that the proposed rule change will apply equally to all academic institutions who choose to purchase the RTRS Academic Data Product.

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

The MSRB received 13 comment letters in response to the request for comment that originally proposed the RTRS Academic Data Product.[11] As was proposed in the Request for Comment, the RTRS Academic Data Product would have been made available for a fee of $500 per calendar-year data set (with a one-time initial set-up fee of $500).[12] Only two of the commenters addressed the proposed fees.[13] Specifically, Harris commented that academics should either pay a reduced rate, when compared to the fee charged to industry participants and their various organizations and consultants, or be given access for free because, in his opinion, academics are often not paid to conduct their research while the public obtains a benefit from the research being conducted. ABFM stated that it believes the fee is reasonable. The MSRB notes that there is no occasion to provide the RTRS Academic Data Product at a discount, as it is available only to academic institutions. Further, the MSRB believes that the proposed fees, which are substantially less than the analogous fees for the historical transaction data sets,[14] are fair and reasonable given the expenses incurred to create and facilitate the product, and that the fees would not overly burden academic institutions.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and paragraph (f) of Rule 19b–4 thereunder.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2016–14 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–MSRB–2016–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2016–14 and should be submitted on or before December 1, 2016.

For the Commission, pursuant to delegated authority.[17]

Brent J. Fields,

Secretary.

[FR Doc. 2016–27149 Filed 11–9–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79245; File No. SR–NSCC–2016–005)

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Accelerate Its Trade Guaranty, Add New Clearing Fund Components, Enhance Its Intraday Risk Management, Provide for Loss Allocation of "Off-the-Market Transactions," and Make Other Changes

November 4, 2016

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2016, National Securities Clearing Corporation ("NSCC" or the "Corporation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by the clearing agency.[3] The

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[11] *See* MSRB Notice 2015–10 (July 16, 2015) ("Request for Comment").

[12] The MSRB notes that the Request for Comment proposed the availability of the RTRS Academic Data Product in calendar-year data sets, but, as it does with other data products and as described above, the MSRB would make the RTRS Academic Data Product available on a rolling basis in one-year data sets.

[13] *See* letters from: Robert Kravchuk, *et al.,* Association for Budgeting and Financial Management ("ABFM"), dated September 13, 2015; and Lawrence Harris ("Harris"), Professor of Finance and Business Economics, University of Southern California, Marshall School of Business, dated September 6, 2015.

[14] The MSRB provides historical transaction data in one-year data sets for $2,500 per year and charges a one-time set-up fee of $2,000.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

[17] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] On October 25, 2016, NSCC filed this proposed rule change as an advance notice (SR–NSCC–2016–803) with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the

Continued

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to NSCC's Rules & Procedures (''Rules'') [4] in order to (i) accelerate NSCC's trade guaranty from midnight of one day after trade date (''T+1'') to the point of trade comparison and validation for bilateral submissions or to the point of trade validation for locked-in submissions, (ii) add three new components to the Clearing Fund formula and eliminate the current Specified Activity charge from the Clearing Fund formula, (iii) amend Procedure II to remove language that permits NSCC to delay processing and reporting for certain index receipt transactions, (iv) enhance NSCC's current intraday mark-to-market margin process and clarify the circumstances and criteria for its intraday risk management monitoring and intraday collections of mark-to-market margin, (v) introduce a new loss allocation provision for any trades that fall within the proposed definition of ''Off-the-Market Transactions'' and (vi) make a technical change to Procedure XV to remove the reference to ID Net Subscribers, as described below.

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

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

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

1. Purpose

(i) Accelerate the NSCC Trade Guaranty

Pursuant to Addendum K of the Rules, NSCC currently guarantees the completion of trades that are cleared and settled through NSCC's Continuous Net Settlement (''CNS'') [5] system (''CNS trades'') and through its Balance Order Accounting Operation [6] (''Balance Order trades'') that have reached the later of midnight of T+1 or midnight of the day they are reported to Members.[7] NSCC proposes to amend its Rules in order to guarantee the completion of CNS trades and Balance Order trades upon comparison and validation for bilateral submissions to NSCC or upon validation for locked-in submissions to NSCC. Validation refers to the process whereby NSCC validates a locked-in trade, or compares and validates a bilateral trade, to confirm such trade has sufficient and correct information for clearance and settlement processing. For purposes of this description in the proposed rule change, the process of comparing and validating bilateral submissions and the process for validating locked-in submissions are collectively referred to as ''trade validation.''

NSCC has previously shortened the time at which its trade guaranty applied to trades in response to processing developments and risk management considerations and to follow industry settlement cycles.[8] Since implementation of the current trade guaranty policy, the marketplace has experienced significant change. The proposed accelerated trade guaranty and related proposed changes described herein would benefit the industry by mitigating counterparty risk and enhancing counterparties' ability to assess that risk by having NSCC become the central counterparty to CNS trades and by applying the trade guaranty to Balance Order trades at an earlier point in the settlement cycle.

The transfer of counterparty credit risk from Members to NSCC at an earlier point in the settlement cycle facilitates a shortened holding period of bilateral credit risk for counterparties by transferring the obligation onto NSCC, which is better equipped to manage that counterparty credit risk, including potential systemic impact, compared to the counterparties themselves.

In order to implement this proposed change, NSCC would amend Addendum K of its Rules [9] to provide that CNS trades and Balance Order trades would be guaranteed by NSCC at the point of trade validation.[10]

NSCC also proposes to clarify in Addendum K [11] that the guaranty of obligations arising out of the exercise or assignment of options that are settled at NSCC is not governed by Addendum K [12] but by a separate arrangement between NSCC and The Options Clearing Corporation, as referred to in Procedure III of the Rules.[13]

(ii) Proposed Enhancements to NSCC's Clearing Fund Formula

In conjunction with accelerating the trade guaranty, NSCC would enhance its Clearing Fund formula to address the risks posed by the expanded trade guaranty. Specifically, NSCC proposes to amend Procedure XV [14] (Clearing Fund Formula and Other Matters) to include three new components: The Margin Requirement Differential (''MRD''), the Coverage Component and the Intraday Backtesting Charge.

NSCC also proposes to add to Procedure XV [15] a description of the enhanced intraday mark-to-market component of the Clearing Fund formula that clarifies the circumstances and criteria for the assessment of an intraday mark-to-market call. In addition, NSCC proposes to delete the Specified Activity charge, a component of the Clearing Fund formula that mitigates shortened cycle risk (that is, the risk of the trade guaranty attaching prior to collection of daily Clearing Fund). This charge would no longer be necessary because the MRD would mitigate those same risks.

A more detailed description of the foregoing changes follows:

A. The Required Deposit and the Accelerated Trade Guaranty

NSCC collects Required Deposits from all Members as margin to protect NSCC against losses in the event of a Member's default. The objective of the Required Deposit is to mitigate potential losses to NSCC associated with liquidation of the Member's portfolio if NSCC ceases to act for a Member (hereinafter referred to as

Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[4] Capitalized terms not defined herein are defined in the Rules, *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[5] CNS and its operation are described in Rule 11 and Procedure VII.

[6] The Balance Order Accounting Operation is described in Rule 5 and Procedure V. NSCC does not become a counterparty to Balance Order trades, but it does provide a trade guaranty to the receive and deliver parties that remains effective through close of business on the originally scheduled settlement date.

[7] Today, shortened process trades, such as same-day and next-day settling trades, are already guaranteed upon comparison or trade recording processing.

[8] *See* Securities Exchange Act Release Nos. 44648 (August 2, 2001), 66 FR 42245 (August 10, 2001) (SR–NSCC–2001–11); 35442 (March 3, 1995), 60 FR 13197 (March 10, 1995) (SR–NSCC–95–02); 35807 (June 5, 1995), 60 FR 31177 (June 13, 1995) (SR–NSCC–95–03); and 27192 (August 29, 1989), 54 FR 37010 (approving SR–NSCC–87–04, SR–MCC–87–03, and SR–SCCP–87–03 until December 31, 1990).

[9] *Supra* note 4.

[10] The proposed accelerated trade guaranty would not apply to items not currently guaranteed today.

[11] *Supra* note 4.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

a ''default''). NSCC determines Required Deposit amounts using a risk-based margin methodology that is intended to capture market price risk. The methodology uses historical market moves to project or forecast the potential gains or losses on the liquidation of a defaulting Member's portfolio, assuming that a portfolio would take three days to liquidate or hedge in normal market conditions. The projected liquidation gains or losses are used to determine the Member's Required Deposit, which is calculated to cover projected liquidation losses to be at or above a 99 percent confidence level (the ''Coverage Target''). The aggregate of all Members' Required Deposits constitutes NSCC's Clearing Fund, which NSCC would be able to access if a defaulting Member's own Required Deposit is insufficient to satisfy losses to NSCC caused by the liquidation of the Member's portfolio.

NSCC calculates and collects Required Deposits from Members daily. Each Member's daily Required Deposit is calculated based on the end-of-day positions from the prior day and is generally collected by 10:00 a.m. ET. NSCC's current trade guaranty does not generally attach to trades until midnight of T+1, after Required Deposits reflecting these trades have been collected. Therefore, Members' Required Deposits are generally sufficient to cover projected liquidation losses for guaranteed trades. However, under the accelerated trade guaranty proposal, NSCC's trade guaranty would attach to current-day trades immediately upon trade validation, before Required Deposits reflecting these trades have been collected (which NSCC refers to herein as the ''coverage gap'').[16] Therefore, Members' Required Deposits may not be sufficient to cover the projected liquidation losses of trades guaranteed by NSCC upon trade validation, and NSCC, absent the proposed Clearing Fund formula enhancements, could incur a loss associated with those trades if it ceases to act for a Member.

B. Addition of the MRD to the Clearing Fund Formula

The MRD is designed to help mitigate the risks posed to the Corporation by day-over-day fluctuations in a Member's portfolio by forecasting future changes in a Member's portfolio based on a historical look-back at each Member's portfolio over a given time period. A Member's portfolio may fluctuate significantly from one trading day to the next as the Member executes trades throughout the day. Currently, daily fluctuations in a Member's portfolio resulting from such trades do not pose any additional or different risk to NSCC because those trades are not guaranteed by NSCC until a Required Deposit reflecting such trades is collected by NSCC. However, under the accelerated trade guaranty proposal, trades would be guaranteed by NSCC upon trade validation and therefore may result in large un-margined intraday portfolio fluctuations during the coverage gap. The MRD would increase Members' Required Deposits by an amount calculated to cover forecasted fluctuations in Members' portfolios, based upon historical activity.

The MRD would be calculated and charged on a daily basis as a part of each Member's Required Deposit and consists of two components: The ''MRD VaR'' and the ''MRD MTM.'' The MRD VaR looks at historical day-over-day positive changes in the start of day (''SOD'') volatility component of a Member's Required Deposit[17] (''Volatility Charge'') over a 100-day look-back period and would be calculated to equal the exponentially weighted moving average (''EWMA'') of such changes to the Member's Volatility Charge during the look-back period. The MRD MTM looks at historical day-over-day increases to the SOD mark-to-market component of a Member's Required Deposit[18] over a 100-day look-back period and would be calculated to equal the EWMA of such changes to the Member's SOD mark-to-market component during the look-back period. The MRD is calculated to equal the sum of MRD VaR and MRD MTM times a multiplier calibrated based on backtesting results. NSCC has determined that a 100-day look-back period would provide it with a sufficient time series to reflect current market conditions.

By addressing the day-over-day changes to each Member's SOD Volatility Charge and SOD mark-to-market component, the MRD would help mitigate the risks posed to the Corporation by un-margined day-over-day fluctuations to a Member's portfolio resulting from intraday trading activity that would be guaranteed during the coverage gap.

C. Addition of the Coverage Component to the Clearing Fund Formula

The ''Coverage Component'' is designed to mitigate the risks associated with a Member's Required Deposit being insufficient to cover projected liquidation losses to the Coverage Target by adjusting a Member's Required Deposit towards the Coverage Target. The Corporation would face increased exposure to a Member's un-margined portfolio as a result of the proposed accelerated trade guaranty and would have an increased need to have each Member's Required Deposit meet the Coverage Target. The Coverage Component would supplement the MRD by preemptively increasing a Member's Required Deposit in an amount calculated to forecast potential deficiencies in the margin coverage of a Member's guaranteed portfolio. The preemptive nature of the Coverage Component differentiates it from the Regular Backtesting Charge and the Intraday Backtesting Charge, both of which are reactive measures to increase the Member's Required Deposit to above the Coverage Target.

The Coverage Component would be calculated and charged on a daily basis as a part of each Member's Required Deposit. To calculate the Coverage Component, NSCC would compare the simulated liquidation profit and loss of a Member's portfolio, using the actual positions in the Member's portfolio and the actual historical returns on the security positions in the portfolio, against the sum of each of the following components of the Clearing Fund formula: The Volatility Charge, the MRD, the Illiquid Charge and the Market Maker domination charge (collectively, the ''Market Risk Components''), to determine if there were any deficiencies between the amounts collected by these components and the simulated profit and loss of the Member's portfolio that would have been realized had it been liquidated during a 100-day look-back period. NSCC would then determine a daily ''peak deficiency'' amount for each Member equal to the maximum deficiency over a rolling 10 business day period for the preceding 100 days. The Coverage Component would be calculated to equal the EWMA of the peak deficiencies over the 100-day look-back period.

In working to bring each Member's Required Deposit towards the Coverage Target by preemptively collecting an

[16] The coverage gap is the period between the time that NSCC would guarantee a trade and the time that NSCC would collect additional margin to cover such trade.

[17] The volatility component of the Clearing Fund formula for CNS trades and Balance Order trades is described in Procedure XV, Sections I.(A)(1)(a) and I.(A)(2)(a), respectively.

[18] The SOD mark-to-market component of the Clearing Fund formula for CNS trades consists of Regular Mark-to-Market and ID Net Mark-to-Market, which are described in Procedure XV, Sections I.(A)(1)(b) and I.(A)(1)(c), respectively. The SOD mark-to-market component of the Clearing Fund formula for Balance Order trades is described in Procedure XV, Section I.(A)(2)(b).

amount designed to cover projected liquidation profit and loss of a Member's portfolio, including the trades guaranteed during the coverage gap, NSCC would further mitigate the risks posed to it by the proposed accelerated trade guaranty.

D. Addition of the Intraday Backtesting Charge to the Clearing Fund Formula

NSCC employs daily backtesting to determine the adequacy of each Member's Required Deposit. NSCC compares the Required Deposit [19] for each Member with the simulated liquidation profit and loss using the actual positions in the Member's portfolio and the actual historical returns on the security positions in the portfolio. NSCC investigates the cause(s) of any backtesting deficiencies. As a part of this investigation, NSCC pays particular attention to Members with backtesting deficiencies that bring the results for that Member below the Coverage Target to determine if there is an identifiable cause of repeat backtesting deficiencies. NSCC also evaluates whether multiple Members experience backtesting deficiencies for the same underlying reason. Upon implementation of the accelerated trade guaranty, NSCC would employ a similar backtesting process on an intraday basis to determine the adequacy of each Member's Required Deposit. However, instead of backtesting a Member's Required Deposit against the Member's SOD portfolio, NSCC would use portfolios from two intraday time slices.[20]

1. Calculation of the Intraday Backtesting Charge

The objective of the Intraday Backtesting Charge is to increase Required Deposits for Members that are likely to experience intraday backtesting deficiencies on the basis described above by an amount sufficient to maintain such Member's intraday backtesting coverage above the Coverage Target. Members that maintain consistent end of day positions but have a high level of intraday trading activity pose risk to NSCC if they were to default intraday.

Because the intraday trading activity and size of the intraday backtesting deficiencies vary among impacted Members, NSCC must assess an Intraday Backtesting Charge that is specific to each impacted Member. To do so, NSCC examines each impacted Member's historical intraday backtesting deficiencies observed over the prior 12-month period to identify the five largest intraday backtesting deficiencies that have occurred during that time. The presumptive Intraday Backtesting Charge amount would equal that Member's fifth largest historical intraday backtesting deficiency, subject to adjustment as further described below. NSCC believes that applying an additional margin charge equal to the fifth largest historical intraday backtesting deficiency to a Member's Required Deposit would have brought the Member's historically observed intraday backtesting coverage above the Coverage Target.[21]

The Intraday Backtesting Charge would only be applicable to those Members whose overall 12-month trailing intraday backtesting coverage falls below the Coverage Target.

Although the fifth largest historical backtesting deficiency for a Member would be used as the Intraday Backtesting Charge in most cases, NSCC would retain discretion to adjust the charge amount based on other circumstances that might be relevant for assessing whether an impacted Member is likely to experience future backtesting deficiencies and the estimated size of such deficiencies. Examples of relevant circumstances that could be considered by NSCC in calculating the final, applicable Intraday Backtesting Charge amount include material differences among the Member's five largest intraday backtesting deficiencies observed over the prior 12-month period, variability in the net settlement activity after the collection of the Member's Required Deposit and observed market price volatility in excess of the Member's historical Volatility Charge. Based on NSCC's assessment of the impact of these circumstances on the likelihood, and estimated size, of future intraday backtesting deficiencies for a Member, NSCC may, in its discretion, adjust the Intraday Backtesting Charge for such Member in an amount that NSCC determines to be more appropriate for maintaining such Member's intraday backtesting results above the Coverage Target.

The resulting Intraday Backtesting Charge would be added to the Required Deposit for such Member and would be imposed on a daily basis for a one-month period.

In order to differentiate the Backtesting Charge assessed on the start of the day portfolio from the Backtesting Charge assessed on an intraday basis, NSCC would amend the Rules by adding a defined term ''Regular Backtesting Charge'' to Procedure XV, Section I.(B)(3).[22]

2. Communication With Members and Imposition of the Intraday Backtesting Charge

If NSCC determines that an Intraday Backtesting Charge should apply to a Member who was not assessed an Intraday Backtesting Charge during the immediately preceding month or that the Intraday Backtesting Charge applied to a Member during the previous month should be increased, NSCC would notify the Member on or around the 25th calendar day of the month prior to the assessment of the Intraday Backtesting Charge or prior to the increase to the Intraday Backtesting Charge, as applicable, if not earlier.

NSCC would impose the Intraday Backtesting Charge as an additional charge applied to each impacted Member's Required Deposit on a daily basis for a one-month period and would review each applied Intraday Backtesting Charge each month. If an impacted Member's trailing 12-month intraday backtesting coverage exceeds the Coverage Target (without taking into account historically imposed Intraday Backtesting Charges), the Intraday Backtesting Charge would be removed.

E. Removal of the Specified Activity Charge From the Clearing Fund Formula

Currently, NSCC collects a Specified Activity charge, which is designed to cover the risk posed to NSCC by transactions that settle on a shortened cycle.[23] Such transactions pose an increased risk to NSCC because these trades settle on a shortened settlement cycle and may be guaranteed by NSCC prior to the collection of margin on them. The Specified Activity charge currently mitigates this risk by increasing the Required Deposit for a Member in relation to the number of Specified Activity trades submitted by the Member to NSCC over a 100-day look-back period. However, the risk posed to NSCC by Specified Activity

[19] For backtesting comparisons, NSCC uses the Required Deposit amount without regard to the actual collateral posted by the Member.

[20] Intraday time slices are subject to change based upon market conditions and would include the positions from SOD plus any additional positions up to that time.

[21] Intraday backtesting would include 500 observations per year (twice per day over 250 observation days). Each occurrence of a backtesting deficiency would reduce a Member's overall backtesting coverage by 0.2 percent (1 exception/500 observations). Accordingly, an Intraday Backtesting Charge equal to the fifth largest backtesting deficiency would have brought backtesting coverage up to 99.2 percent.

[22] *Supra* note 4.

[23] Examples of these trades can include next day settling trades, same day settling trades, cash trades or sellers' options.

would no longer be unique to such trade activity—the proposed accelerated trade guaranty would result in a similar risk to NSCC. The addition of the MRD and Coverage Components to the Clearing Fund formula would mitigate the risks posed by trades guaranteed by NSCC prior to the collection of margin on those trades. As a result, NSCC proposes to eliminate the Specified Activity charge because imposing a separate Specified Activity charge would no longer be necessary once the MRD and Coverage Components are added to the Clearing Fund formula.

F. Enhanced Intraday Mark-to-Market Margining

NSCC proposes to enhance its current intraday margining to further mitigate the intraday coverage gap risk that may be introduced to the Corporation as a result of the proposed accelerated trade guaranty. By way of background, NSCC currently collects a SOD mark-to-market margin, which is designed to mitigate the risk arising out of the value change between the contract/settlement value of a Member's open positions and the current market value, as part of its Clearing Fund formula. A Member's SOD mark-to-market margin is calculated and collected as part of a Member's daily Required Deposit based on the Member's prior end-of-day positions. The SOD mark-to-market component of the daily Required Deposit is calculated to cover a Member's exposure due to market moves and/or trading and settlement activity by bringing the portfolio of open positions up to the current market value. However, because the SOD mark-to-market component is calculated only once daily using the prior end-of-day positions and prices, it will not cover a Member's exposure arising out of any intraday changes to position and market value in a Member's portfolio. Accordingly, NSCC currently collects intraday mark-to-market margin from Members to cover additional risk exposure arising out of intraday position and market value changes to the Member's portfolio if the additional risks are sufficiently large to warrant the collection of an intraday margin.

NSCC has determined that it is not necessary to collect intraday margin from every Member that experiences an intraday mark-to-market change because the Volatility Charge already collected as part of Members' daily Required Deposits is calculated to cover projected changes in the contract/settlement value of a Member's portfolio and likely cover intraday changes to a Member's portfolio. However, in certain instances, Members may have intraday mark-to-market changes that are significant enough that NSCC is exposed to an increased risk of loss as a result of such Member's intraday activities. In particular, NSCC measures each Member's intraday mark-to-market exposure against the Volatility Charge. NSCC collects an intraday mark-to-market amount from any Member that has an intraday mark-to-market exposure that meets or exceeds a threshold percentage as compared to the Member's Volatility Charge. NSCC believes that such Members pose an increased risk of loss to the Corporation because the coverage provided by the Volatility Charge, which is designed to cover estimated losses to a portfolio over a specified time period, would be exhausted by an intraday mark-to-market exposure so large that the Member's Required Deposit would potentially be unable to absorb further intraday losses to the Member's portfolio.

In order to further mitigate the risk posed to NSCC by the proposed accelerated trade guaranty, NSCC is proposing to enhance its collection of intraday mark-to-market margin. NSCC would impose the intraday mark-to-market margin amount at a lower threshold. Currently, NSCC makes an intraday mark-to-market margin call if a Member's intraday mark-to-market exposure meets or exceeds 100 percent of such Member's Volatility Charge; however, such threshold may be reduced by NSCC during volatile market conditions. With this proposal, NSCC would make an intraday margin call if a Member's intraday mark-to-market exposure meets or exceeds 80 percent of such Member's Volatility Charge, where such threshold may still be reduced by NSCC during volatile market conditions. This proposed change would serve to collect intraday margin earlier and more proactively preserve the coverage provided by a Member's Volatility Charge and Required Deposit.

In addition, NSCC would monitor intraday changes to Member's mark-to-market exposure at regular intervals to further mitigate the risk posed to NSCC by the accelerated trade guaranty. By doing so, NSCC would be able to make intraday margin calls more frequently to those Members whose intraday mark-to-market exposures exceed the Volatility Charge threshold. Enhancing the collection of the intraday mark-to-market amount so that it occurs earlier and more frequently would allow NSCC to reduce the amount of uncovered risk during the coverage gap and would therefore further mitigate the risk posed to the Corporation by the accelerated trade guaranty.

NSCC proposes to amend Procedure XV to include a description of the enhanced intraday mark-to-market margin charge that clarifies the circumstances and criteria for the assessment of an intraday mark-to-market call. This would ensure that Members are aware that the Corporation regularly monitors and considers intraday mark-to-market as part of its regular Clearing Fund formula.

G. Adjustments to the Calculation of the Excess Capital Premium Component

The Excess Capital Premium [24] is designed to address spikes in a Member's Required Deposit based upon any one day of activity. It is not designed to provide additional Required Deposits over an extended period of time. Currently, the Excess Capital Premium for a Member is calculated based upon the Member's Clearing Fund Required Deposit and the Member's excess net capital. With the addition of the MRD and the Coverage Component, NSCC proposes to exclude these charges from the calculation of the Excess Capital Premium. The MRD and the Coverage Component all utilize a historical look-back period, which accounts for the risk of such activity well after the relevant trades have settled. Risks related to such trades would be reflected in increased amounts assessed for these components over the subsequent time periods. If these components are included in the calculation of the Excess Capital Premium, especially during periods following an increase in activity, then the increased MRD and Coverage Component could lead to more frequent Excess Capital Premium charges over an extended period of time. This is not the intended purpose of the Excess Capital Premium and could place an unnecessary burden on Members.

(iii) Proposed Changes to Procedure II (Trade Comparison and Recording Service)

Next day settling index receipts may be guaranteed prior to the collection of margin reflecting such trades and thus carry a very similar risk as Specified Activity trades described above. More specifically, because these trades are settled on the day after they are received and validated by NSCC, NSCC currently attaches its guaranty to them at the time of validation, prior to the collection of a Required Deposit that reflects such trades. Unlike the risk from Specified

[24] The Excess Capital Premium is a charge imposed on a Member when the Member's Required Deposit exceeds its excess net capital, as described in Procedure XV.

Activity trades, which is mitigated by the Specified Activity charge, the risk for next day settling index receipts is currently mitigated by permitting NSCC to delay the processing and reporting of these trades if a Member's Required Deposit is not paid on time. However, like the risk associated with Specified Activity, under the proposed rule change, this risk would generally be mitigated by the addition of the MRD and the Coverage Component. Therefore, NSCC proposes to amend Procedure II [25] (Trade Comparison and Recording Service) to remove the language that permits NSCC to delay the processing and reporting of next day settling index receipts until the applicable margin on these transactions is paid.

(iv) Loss Allocation Provision for Off-the-Market Transactions

NSCC proposes to introduce a new loss allocation provision for any trades that fall within the proposed definition of ''Off-the-Market Transactions'' in order to limit NSCC's exposure to certain trades that have a price that differs significantly from the prevailing market price for the underlying security at the time the trade is executed. This provision would apply in the event that NSCC ceases to act for a Member that engaged in Off-the-Market Transactions and only to the extent that NSCC incurs a net loss in the liquidation of such Transactions.[26]

NSCC would define ''Off-the-Market Transactions'' as either a single transaction or a series of transactions settled within the same cycle with greater than $1 million in gross proceeds and either higher or lower than the most recently observed market price by a percentage amount based on market conditions and factors that impact trading behavior of the underlying security, including volatility, liquidity and other characteristics of such security.

The proposed rule change would establish the loss allocation for Off-the-Market Transactions. NSCC would allocate any losses to NSCC resulting from the liquidation of any guaranteed, open Off-the-Market Transaction of a defaulted Member directly and entirely to the surviving counterparty to that transaction. Losses would be allocated to counterparties in proportion to their specific Off-the-Market Transaction gain and would be allocated only to the extent of NSCC's loss; however, no allocation shall be made if the defaulted Member has satisfied all requisite intraday mark-to-market margin assessed by NSCC with respect to the Off-the-Market Transaction.[27]

This proposed change would allow NSCC to mitigate the risk of loss associated with guaranteeing these Off-the-Market Transactions. The proposal recognizes that applying the accelerated trade guaranty to transactions whose price significantly differs from the most recently observed market price could inappropriately increase the loss that NSCC may incur if a Member that has engaged in Off-the-Market Transactions defaults and its open, guaranteed positions are liquidated. Members not involved in Off-the-Market Transactions, or not involved in Off-the-Market Transactions that result in losses to NSCC, would not be included in this process. This exclusion would apply only to losses that are attributable to Off-the-Market Transactions and would not exclude Members from other obligations that may result from any loss or liabilities incurred by NSCC from a Member default.

In order to implement this proposed change, NSCC would amend Rule 4 [28] (Clearing Fund) to provide that, if a loss or liability of NSCC is determined by NSCC to arise in connection with the liquidation of any Off-the-Market Transactions, such loss or liability would be allocated directly to the surviving counterparty to the Off-the-Market Transaction that submitted the transaction to NSCC for clearing. NSCC would also amend Rule 1 [29] (Definitions and Descriptions) to include a definition of Off-the-Market Transactions.

(v) Technical Proposed Rule Change

NSCC is proposing a change to Procedure XV [30] to clarify the calculation of the Regular Mark-to-Market component for CNS transactions. NSCC's historical and current policy for the calculation of any mark-to-market component of the Clearing Fund calculation for CNS trades and Balance Order trades is that where a credit is derived from a Member's mark-to-market calculation, the value of the calculation is adjusted to zero. When NSCC implemented the ID Net service,[31] a provision was added to Procedure XV [32] that explicitly stated this policy as it relates to CNS transactions of subscribers to the ID Net service. This change inadvertently created an implication that the calculation of Regular Mark-to-Market credit for Members who were not ID Net Subscribers would not be set to zero. NSCC is proposing to revise the applicable provision to remove the reference to ID Net Subscribers.

(vi) Member Outreach

Over the past several years, NSCC has conducted outreach with its Members with respect to impact on their Clearing Fund Required Deposits as a result of this proposal. This includes the publication of the 2013 whitepaper, ''Enhancing Risk Management: Important Upcoming Changes From NSCC'', as well as individual impact studies provided to each Member showing the anticipated impact on the Member's Clearing Fund Required Deposit based on their historical portfolios.

Implementation Timeframe

Pending Commission approval, Members would be advised of the implementation date of this proposal through issuance of an NSCC Important Notice. NSCC expects to run the proposed changes in a test environment for a parallel period of at least three months prior to implementation. Details and dates regarding such test period would be communicated to Members through an NSCC Important Notice.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that NSCC's Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody and control of NSCC or for which it is responsible and to protect investors and the public interest.[33]

The proposal to accelerate the time that NSCC's trade guaranty attaches to trades submitted to it for clearing has been designed to promote the prompt and accurate clearance and settlement of

[25] *Supra* note 4.

[26] A net loss on liquidation of the Off-the-Market Transaction means that the loss on liquidation of the Member's portfolio exceeds the collected Required Deposit of the Member and such loss is attributed to the Off-the-Market Transaction. Such loss would be allocated directly and entirely to the Member that submitted the Off-the-Market Transaction, or on whose behalf the Off-the-Market Transaction was submitted, to NSCC; however, no allocation would be made if such Member has satisfied all applicable intraday mark-to-market margin charges assessed by NSCC with respect to the Off-the-Market Transaction.

[27] A Member's Off-the-Market Transaction that has been marked to market is, by definition, no longer an Off-the-Market Transaction when the mark-to-market component of the Member's Required Deposit is satisfied.

[28] *Supra* note 4.

[29] *Id.*

[30] *Id.*

[31] NSCC's ID Net service is defined further in Rule 65. Rules, *supra* note 4. *See* Securities Exchange Act Release No. 57901 (June 2, 2008), 73 FR 32373 (June 6, 2008) (SR–NSCC–2007–14).

[32] *Supra* note 4.

[33] 15 U.S.C. 78q–1(b)(3)(F).

securities transactions in furtherance of the Act. Specifically, NSCC would provide a trade guaranty to CNS trades and Balance Order trades at an earlier point in the settlement cycle. The proposed accelerated guaranty would mitigate counterparty risk and would enhance Members' ability to assess that risk by having NSCC become the central counterparty to CNS trades and by applying the trade guaranty to Balance Order trades at an earlier point in the settlement cycle. Therefore, NSCC believes the proposed accelerated guaranty promotes the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[34]

The proposed rule changes to (i) add the new components to the Clearing Fund formula, (ii) enhance the intraday mark-to-market margin process and (iii) remove provisions regarding the Specified Activity charge and the provisions that permit NSCC to delay processing and reporting for certain index receipt transactions (all as described in detail above) have been designed to assure the safeguarding of securities and funds in the custody and control of NSCC or for which it is responsible in furtherance of the Act. Specifically, the proposals in (i) and (ii) would allow NSCC to appropriately collect additional margin to mitigate the exposure presented to NSCC by the accelerated trade guaranty, providing NSCC with the ability to safeguard the funds and securities for which it is responsible by enabling it to collect adequate collateral to cover its additional exposures. By enhancing the Clearing Fund formula, the proposals in (i) and (ii) would also reduce the risk of loss mutualization to Members because the enhanced margin collected from each Member would help NSCC limit its exposure to potential losses from defaults by its participants under normal market conditions and minimize potential losses to NSCC and its non-defaulting Members. The proposed rule changes in (iii) would eliminate provisions that would no longer be needed to mitigate risk because the risk they currently address would be addressed by the new components proposed to be introduced to the Clearing Fund formula, as discussed in detail above. Therefore, NSCC believes the proposed rule changes in (i), (ii) and (iii) assures the safeguarding of securities and funds which are in the custody and control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[35]

The proposed rule change to introduce a new loss allocation provision for any trades that fall within the proposed definition of Off-the-Market Transactions would help NSCC to limit its exposure to certain trades that have a price that differs significantly from the most recently observed market price for the underlying security. Therefore, the reduction of NSCC's exposure to Off-the-Market Transactions would assist NSCC in responding to a Member default and would minimize potential losses to NSCC and its non-defaulting Members. As such, this proposed rule change is designed to assure the safeguarding of securities and funds that are in the custody and control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[36]

Also, the proposed technical change to the calculation of the Regular Mark-to-Market component for CNS transactions would provide additional clarity to NSCC Members and would ensure the Rules accurately reflect that Regular Mark-to-Market credit for all NSCC Members would be set to zero. Therefore, NSCC believes the proposed technical change would protect investors and the public interest, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[37]

NSCC believes that the proposal is also consistent with Rules 17Ad–22(b)(1) and (b)(2), promulgated under the Act. Rule 17Ad–22(b)(1) requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions so that the operations of NSCC would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.[38] NSCC's proposal to expand its current intraday margin collection to include (a) the collection of intraday mark-to-market margin at a lower threshold and (b) the collection of the Intraday Backtesting Charge would further enhance its intraday monitoring and its ability to measure credit exposures at least once a day. The proposal to enhance the amount of margin collected from each Member would help NSCC to limit its exposure to potential losses from defaults by its participants under normal market conditions and reduce risk of loss mutualization to the NSCC membership. Similarly, the proposal to introduce a new loss allocation provision for Off-the-Market Transactions would also help NSCC to limit its exposure to potential losses from defaults by its participants under normal market conditions. Therefore, NSCC believes the proposals are consistent with the requirements of Rule 17Ad–22(b)(1), promulgated under the Act, cited above.

Rule 17Ad–22(b)(2) requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to "use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements." [39] The proposal to add the MRD, the Coverage Component and the Intraday Backtesting Charge to the Clearing Fund formula and to collect intraday mark-to-market margin at a lower threshold in order to mitigate the exposure presented to NSCC by the accelerated trade guaranty would enable NSCC to enhance its margin requirements to better limit its credit exposures to participants under normal market conditions. Therefore, NSCC believes the proposed changes are consistent with the requirements of Rule 17Ad–22(b)(2), promulgated under the Act, cited above.

The proposed changes to NSCC's Clearing Fund formula and the intraday margin process are also designed to be consistent with Rules 17Ad–22(e)(4) and (e)(6) of the Act, which were recently adopted by the Commission.[40] Rule 17Ad–22(e)(4) will require NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes.[41] NSCC's proposal to expand its current intraday margin collection to include (a) the collection of intraday mark-to-market margin at a lower threshold and (b) the collection of the Intraday Backtesting Charge would enhance its ability to identify, measure,

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] 17 CFR 240.17Ad–22(b)(1).

[39] 17 CFR 240.17Ad–22(b)(2).

[40] The Commission adopted amendments to Rule 17Ad–22, including the addition of new section 17Ad–22(e), on September 28, 2016. *See* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14). The amendments to Rule 17Ad–22 become effective on December 12, 2016. *Id.* NSCC is a "covered clearing agency" as defined in Rule 17Ad–22(a)(5) and must comply with new section (e) of Rule 17Ad–22 by April 11, 2017. *Id.*

[41] *See* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14).

monitor and manage its credit exposures to participants. The proposal to enhance the amount of margin NSCC collected from each Member and to introduce a new loss allocation provision for Off-the-Market Transactions would further help NSCC to manage its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes. Therefore, NSCC believes these proposals are consistent with the requirements of Rule 17Ad–22(e)(4), promulgated under the Act, cited above.

Rule 17Ad–22(e)(6) will require NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that is monitored by management on an ongoing basis and regularly reviewed, tested, and verified.[42] The proposal to add the MRD, the Coverage Component and the Intraday Backtesting Charge to the Clearing Fund formula and to collect intraday mark-to-market margin at a lower threshold would help NSCC to cover its credit exposures to its participants by establishing a risk-based margin system that is monitored by management on an ongoing basis and regularly reviewed, tested, and verified. Therefore, NSCC believes this proposal is consistent with the requirements of Rule 17Ad–22(e)(6), promulgated under the Act, cited above.

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

NSCC does not believe that the proposed rule changes associated with the acceleration of NSCC's guaranty would impose any burden on competition but, because these proposed changes would pose additional risks to NSCC, NSCC has also proposed to (i) add the new components to the NSCC Clearing Fund formula and (ii) enhance the intraday mark-to-market margin process; however, NSCC does not believe these proposed rule changes would impose any burden on competition that is not necessary and appropriate[43] because the additional margin charges assessed on Members are needed to limit the additional exposure to NSCC of potential losses from defaults by Members as a result of guaranteeing trades at an earlier point in the settlement cycle and are commensurate with the risk presented by the trades Members submitted to NSCC for clearing.

Additionally, NSCC has proposed to introduce a new loss allocation provision for any trades that fall within the proposed definition of Off-the-Market Transactions; however, NSCC also does not believe that this proposed change would impose any burden on competition that is not necessary or appropriate[44] because the new loss allocation provision would allow NSCC to mitigate the risk of loss associated with guaranteeing the Off-the-Market Transactions and would apply to Members in proportion to their specific Off-the-Market Transaction gain and only to the extent of NSCC's loss.

Based on the foregoing, NSCC does not believe the proposed rule changes would impose any burden on competition that is not necessary and appropriate.[45]

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

NSCC has not received any written comments relating to this proposed rule change. NSCC will notify the Commission of any written comments it receives.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2016–005 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NSCC–2016–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2016–005 and should be submitted on or before December 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Brent J. Fields,

Secretary.

[FR Doc. 2016–27154 Filed 11–9–16; 8:45 am]

BILLING CODE 8011–01–P

[42] *Id.*

[43] 15 U.S.C. 78q–1(b)(3)(I).

[44] *Id.*

[45] *Id.*

[46] 17 CFR 200.30–3(a)(12).