

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95664; File No. SR–MRX–2022–11]

### Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing of Proposed Rule Change To Adopt Rules Related to ISO Functionality

September 2, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on August 18, 2022, Nasdaq MRX, LLC (“MRX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt rules related to Intermarket Sweep Order (“ISO”) functionality.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/mrx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to adopt ISO functionality in Options 3, Section 11 that permits Members to submit ISOs in the Exchange’s Facilitation Mechanism

(“Facilitation ISO”), and Solicited Order Mechanism (“Solicitation ISO”).<sup>3</sup>

As set forth in Options 3, Section 11(b), the Facilitation Mechanism is a process wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism. As set forth in Options 3, Section 11(d), the Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent against contra orders it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none.

An ISO is defined in Options 3, Section 7(b)(5) as a limit order that meets the requirements of Options 5, Section 1(h) and trades at allowable prices on the Exchange without regard to the ABBO. Simultaneously with the routing of the ISO to the Exchange, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO.<sup>4</sup> A Member may submit an ISO to the Exchange only if it has simultaneously routed one or more additional ISOs to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the ISO.

As discussed further below, none of the proposed rule changes will amend current functionality. Rather, these changes are designed to bring greater transparency around certain order types currently available on the Exchange. The Exchange notes that the Facilitation ISO and Solicitation ISO<sup>5</sup> are

<sup>3</sup> This functionality is currently offered on the Exchange, so the proposed rule change codifies existing functionality in the Exchange’s rules.

<sup>4</sup> “Protected Bid” or “Protected Offer” means a Bid or Offer in an options series, respectively, that: (a) is disseminated pursuant to the Options Order Protection and Locked/Crossed Market Plan; and (b) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. See Options 5, Section 1(o).

<sup>5</sup> The Exchange notes that it has an ISO trade through surveillance in place that will identify and capture when a Member marks a Facilitation or Solicitation ISO and the order possibly trades through a Protected Bid or Protected Offer price at

functionally similar to the Exchange’s Price Improvement Mechanism<sup>6</sup> ISO (“PIM ISO”) as set forth in Supplementary Material .08 to Options 3, Section 13, as further discussed below.<sup>7</sup>

#### Facilitation ISO

Today, the Exchange allows the submission of ISOs into its Facilitation Mechanism as Facilitation ISOs. To promote transparency, the Exchange proposes to memorialize Facilitation ISOs as an order type in Supplementary Material .06 to Options 3, Section 11. Specifically, the Exchange proposes:

A Facilitation ISO order (“Facilitation ISO”) is the transmission of two orders for crossing pursuant to paragraph (b) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Facilitation ISO to the Exchange has, simultaneously with the routing of the Facilitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation auction price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

Today, the Exchange will accept a Facilitation ISO provided the order adheres to the current order entry requirements for the Facilitation Mechanism as set forth in Options 3, Section 11(b)(1),<sup>8</sup> but without regard to

an away exchange. The Exchange will monitor the NBBO prior to and after the order trades on the Exchange to detect potential trade through violations.

<sup>6</sup> The Price Improvement Mechanism (“PIM”) is a process that allows an Electronic Access Member to provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent. See Options 3, Section 13(a).

<sup>7</sup> The Exchange also notes that its affiliates, Nasdaq BX (“BX”) and Nasdaq Phlx (“Phlx”), currently allow ISOs to be entered into BX’s Price Improvement Mechanism (“PRISM”) and Phlx’s Price Improvement XL (“PIXL”), respectively. See BX Options 3, Section 13(ii)(K) (describing PRISM ISOs) and Phlx Options 3, Section 13(b)(11) (describing PIXL ISOs). Other options exchanges similarly allow ISOs to be entered into their auction mechanisms. See e.g., Cboe Rules 5.37(b)(4)(A) (allowing ISOs to be entered into Cboe’s Automated Improvement Mechanism (“AIM ISOs”) and 5.39(b)(4) (allowing ISOs to be entered into Cboe’s Solicitation Auction Mechanism (“SAM ISOs”)).

<sup>8</sup> Specifically, Options 3, Section 11(b)(1) provides that orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the order must be entered at an improved price; and (B) equal to or better than the ABBO on the opposite side. Orders that do not meet these requirements are not eligible for the Facilitation Mechanism and will be rejected.

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

<sup>2</sup> 17 CFR 240.19b–4.

the ABBO (similar to a regular ISO in Options 3, Section 7(b)(5)). Therefore, Facilitation ISOs must be entered at a price that is equal to or better than the Exchange best bid or offer on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the Facilitation ISO must be entered at an improved price. The Exchange does not check the Exchange best bid or offer on the opposite side of the Facilitation ISO because the underlying Facilitation Mechanism similarly does not check the opposite side Exchange best bid or offer. As discussed above, the Facilitation Mechanism only requires that the opposite side of the Facilitation order be equal to or better than the ABBO.<sup>9</sup> The Facilitation Mechanism does not check the opposite side Exchange best bid or offer because any interest that is available on the opposite side of the market would allocate against the Facilitation agency order and provide price improvement. As an example:

Assume the following market:

Exchange BBO: 1 × 2 (also NBBO)  
CBOE: 0.75 × 2.25 (next best exchange quote)

Facilitation order is entered to buy 50 contracts @2.05

No Responses are received.

The Facilitation order executes with resting 50 lot quote @2. In this instance, the Facilitation order is able to begin crossed with the contra side Exchange BBO because in execution, the resting 50 lot quote @2 is able to provide price improvement to the facilitation order.

Given that the Facilitation ISO is accepted so long as it adheres to the order entry requirements of the underlying Facilitation Mechanism, but without regard to the ABBO, the Exchange believes that it is appropriate and logical to align the order entry checks of the Facilitation ISO in the manner discussed above.

The Exchange processes the Facilitation ISO in the same manner that it processes any other Facilitation orders, except that it will initiate a Facilitation auction without protecting prices away. Instead, the Member entering the Facilitation ISO will bear the responsibility to clear all better priced interest away simultaneously with submitting the Facilitation ISO to the Exchange. The Exchange believes that offering this order type is beneficial for Members as it provides them with an efficient method to initiate a Facilitation auction while preventing trade-throughs.

The Exchange notes that the Facilitation ISO is similar to the PIM ISO that is currently described in Supplementary Material .08 to Options 3, Section 13.<sup>10</sup> Similar to the Facilitation ISO, the PIM ISO must meet the order entry requirements for PIM in Options 3, Section 13(b) but does not consider the ABBO.<sup>11</sup> Further, the Exchange processes a PIM ISO order the same way as any other PIM order except the Exchange will initiate a PIM auction without protecting away prices. As with Facilitation ISOs, the Member entering the PIM ISO bears responsibility to clear all better priced interest away simultaneously with submitting the PIM ISO to the Exchange.

The following example illustrates how Facilitation ISO operates:

Assume:

ABBO: 1 × 1.20

MRX BBO: 0.90 × 1.30

Member enters Facilitation ISO with Agency side to buy 50 @1.25  
Facilitation ISO auction period concludes with no responses arriving

Facilitation ISO executes with contra side 50 @1.25

Solicitation ISO

Today, the Exchange allows the submission of ISOs into its Solicited Order Mechanism as Solicitation ISOs. To promote transparency, the Exchange proposes to memorialize Solicitation

<sup>10</sup> Supplementary Material .08 to Options 3, Section 13 defines PIM ISO as the transmission of two orders for crossing pursuant to this Rule without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the PIM ISO to the Exchange has, simultaneously with the routing of the PIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the PIM order.

<sup>11</sup> Unlike the Facilitation Mechanism, PIM requires an opposite side NBBO check, which would include the Exchange best bid or offer. As discussed above, the Facilitation order entry checks only require that the opposite side of the Facilitation order be equal to or better than the ABBO (*i.e.*, there is no opposite side local book check). For PIM, the order must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market if the Agency Order is for less than 50 option contracts and if the difference between the NBBO is \$0.01. If the Agency Order is for 50 option contracts or more, or if the difference between the NBBO is greater than \$0.01, the PIM order must be entered at a price that is equal to or better than the NBBO on the opposite side. *See* Options 3, Section 13(b)(1) and (2). As such, PIM ISOs additionally require the entering Member to sweep all interest in the Exchange's book priced better than the proposed auction starting price (unlike Facilitation ISO which does not have a similar sweep requirement).

ISOs as an order type in Supplementary Material .07 to Options 3, Section 11. Specifically, the Exchange proposes:

A Solicitation ISO order ("Solicitation ISO") is the transmission of two orders for crossing pursuant to paragraph (d) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Solicitation ISO to the Exchange has, simultaneously with the routing of the Solicitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Solicitation auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

Today, the Exchange will accept a Solicitation ISO provided the order adheres to the current order entry requirements for the Solicited Order Mechanism as set forth in Options 3, Section 11(d)(1),<sup>12</sup> but without regard to the ABBO (similar to a regular ISO in Options 3, Section 7(b)(5)). Therefore, Solicitation ISOs must be entered at a price that is equal to or better than the Exchange best bid or offer on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the Solicitation ISO must be entered at an improved price.

The Exchange processes the Solicitation ISO in the same manner that it processes other orders entered in the Solicited Order Mechanism, except that it will initiate a Solicited Order auction without protecting away prices. Instead, the Member entering the Solicitation ISO will bear the responsibility to clear all better priced interest away simultaneously with submitting the Solicitation ISO to the Exchange. Similar to the Facilitation ISO discussed above, the Exchange believes that offering this order type is beneficial for Members as it provides them with an efficient method to initiate an auction in the Solicited Order Mechanism while preventing trade-throughs. Furthermore, Solicitation ISOs are similar to PIM ISOs in the manner described above for Facilitation ISOs.<sup>13</sup> In addition, another options

<sup>12</sup> Specifically, Options 3, Section 11(d)(1) provides that orders must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the order must be entered at an improved price. Orders that do not meet these requirements are not eligible for the Solicited Order Mechanism and will be rejected.

<sup>13</sup> The Exchange notes that similar to the PIM ISO, but unlike Facilitation ISO, the Solicitation

<sup>9</sup> *Id.*

exchange currently offers a substantially similar order type as the Exchange's Solicitation ISO.<sup>14</sup>

The following example illustrates how the Solicitation ISO operates:

*Assume:*

ABBO:  $1 \times 1.20$

MRX BBO:  $0.90 \times 1.30$

Member enters Solicitation ISO with

Agency side to buy 500 @1.25

Solicitation ISO auction period

concludes with no responses

arriving

Solicitation ISO executes with contra side 500 @1.25

#### Intermarket Sweep Orders

In light of the changes proposed above to adopt the Facilitation ISO and Solicitation ISO into its Rulebook, the Exchange proposes to make related amendments to the ISO rule in Options 3, Section 7(b)(5) to add that "ISOs may be entered on the single leg order book or into the Facilitation Mechanism, Solicited Order Mechanism, or Price Improvement Mechanism, pursuant to Supplementary Material .06 and .07 to Options 3, Section 11, and Supplementary Material .08 to Options 3, Section 13."

The proposed rule text will be similar to BX's current ISO rule in BX Options 3, Section 7(a)(6), except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today. Specifically, BX does not currently offer Facilitation ISOs or Solicitation ISOs. PIM ISOs are currently codified in Supplementary Material .08 to Options 3, Section 13, so the proposed rule text herein is a non-substantive amendment to add a cross-reference to the PIM ISO rule. The proposed language does not amend the current ISO functionality but rather is intended to add more granularity and

ISO requires entering Members to sweep all interest in the Exchange's book priced better than the proposed auction starting price. The order entry checks for the Solicited Order Mechanism, similar to PIM, requires an opposite side NBBO check, which would include the Exchange best bid or offer. See *supra* notes 11–12.

<sup>14</sup> In addition, Cboe currently offers a SAM ISO order type, which is defined as the submission of two orders for crossing in a SAM Auction without regard for better-priced Protected Quotes (as defined in Cboe Rule 5.65) because the Initiating TPH routed an ISO(s) simultaneously with the routing of the SAM ISO to execute against the full displayed size of any Protected Quote that is better than the stop price and has swept all interest in the Book with a price better than the stop price. Any execution(s) resulting from these sweeps accrue to the SAM Agency Order. See Cboe Rule 5.39(b)(4). See also Securities Exchange Act Release No. 87192 (October 1, 2019), 84 FR 53525 (October 7, 2019) (SR-CBOE-2019-063) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change related to the SAM Auction, including to adopt the SAM ISO).

more closely align the ISO rule with BX's ISO rule.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>16</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

#### Facilitation and Solicitation ISOs

The Exchange believes that the proposal to adopt Facilitation ISOs and Solicitation ISOs in Supplementary Material .06 and .07 to Options 3, Section 11 is consistent with the Act. The proposal will codify current functionality, thereby promoting transparency in the Exchange's rules and reducing any potential confusion. As it relates to Solicitation ISOs, the Exchange believes that the proposed rule change promotes fair competition. Specifically, the proposal allows the Exchange to offer Members an order type that is already offered by another options exchange.<sup>17</sup>

In addition, offering the Facilitation ISO and Solicitation ISO benefits market participants and investors because this functionality provides an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs. As discussed above, the Exchange processes the Facilitation and Solicitation ISO in the same manner as it processes any other order entered into the Facilitation and Solicited Order Mechanism, except the Exchange will initiate a Facilitation auction or Solicited Order auction without protecting away prices (similar to a regular ISO in Options 3, Section 7(b)(5)). Instead, the entering Member, simultaneous with the routing of the Facilitation ISO or Solicitation ISO to the Exchange, remains responsible for routing one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation or Solicitation auction price, and for Solicitation ISO, has swept all interest in the Exchange's book priced better than the proposed auction starting price.<sup>18</sup> As discussed above, these order types operate in a similar manner to the PIM ISO that is

currently described in Supplementary Material .08 to Options 3, Section 13.<sup>19</sup>

#### Intermarket Sweep Orders

The Exchange believes that the proposed changes to the definition of ISOs in Options 3, Section 7(b)(5) are consistent with the Act. As discussed above, the proposed changes are intended to add more granularity and more closely align the level of detail in the ISO rule with BX's ISO rule in BX Options 3, Section 7(a)(6) by specifying how ISOs may be submitted. As such, the Exchange believes that its proposal will promote transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges. While the proposed changes to the Exchange's ISO rule generally track BX's ISO rule, the proposed language will refer to certain Exchange functionality that BX does not have today (*i.e.*, Facilitation ISOs or Solicitation ISOs).

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Offering Facilitation and Solicitation ISOs does not impose an undue burden on competition because it enables the Exchange to provide market participants with an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs, as discussed above. In addition, all Members may submit a Facilitation ISO or Solicitation ISO. As it relates to the Solicitation ISO, the Exchange believes that the proposed rule change will promote fair competition among options exchanges as it will allow the Exchange to compete with other markets that already allow ISOs in their solicitation auction mechanisms.<sup>20</sup>

The Exchange further believes that the proposed changes to its ISO rule do not impose an undue burden on competition. As discussed above, the proposed changes are intended to add more granularity and more closely align the level of detail in the ISO rule with BX's ISO rule in BX Options 3, Section 7(a)(6) by specifying how ISOs may be submitted, except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today (*i.e.*, Facilitation and Solicitation ISOs). With the proposed changes, the Exchange believes that its proposal will promote

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See *supra* note 14.

<sup>18</sup> See *supra* note 13.

<sup>19</sup> See *supra* notes 11 and 13.

<sup>20</sup> See *supra* note 14.

transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges.

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days of such date (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 Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MRX-2022-11 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-MRX-2022-11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MRX-2022-11 and should be submitted on or before September 29, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-95656; File No. SR-NSCC-2022-005]**

**Self-Regulatory Organizations; National Securities Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Revise the Excess Capital Premium Charge**

September 1, 2022.

**I. Introduction**

On May 20, 2022, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2022-005 (the "Proposed Rule Change") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The Proposed Rule Change was published for comment in the **Federal Register** on June 8, 2022,<sup>3</sup> and the Commission has received

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Securities Exchange Act Release No. 95026 (June 2, 2022), 87 FR 34913 (June 8, 2022) (File No. SR-NSCC-2022-005). The Notice referred to an incorrect filing date of May 30, 2022; however, the proposal was filed on May 20, 2022, as indicated here.

comments regarding the changes proposed in the Proposed Rule Change.<sup>4</sup>

On July 11, 2022, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.<sup>6</sup> This order institutes proceedings, pursuant to Section 19(b)(2)(B) of the Act,<sup>7</sup> to determine whether to approve or disapprove the Proposed Rule Change.

**II. Summary of the Proposed Rule Change**

A key tool that NSCC uses to manage its respective credit exposures to its members is the daily collection of margin from each member, which is referred to as each member's Required Fund Deposit. The aggregated amount of all members' margin constitutes the Clearing Fund, which NSCC would access should a defaulted member's own margin be insufficient to satisfy losses to NSCC caused by the liquidation of that member's portfolio.

The Excess Capital Premium (ECP) charge is a component of the Clearing Fund that is designed to mitigate the heightened default risk a member could pose to NSCC if it operates with lower capital levels relative to its margin requirements. Each Business Day, NSCC determines if a member may be subject to the ECP charge by first determining its Calculated Amount. The Calculated Amount is a portion of a member's Required Fund Deposit designed to represent its margin requirements to NSCC.

As described in the Notice, NSCC proposes to modify Procedure XV (Clearing Fund Formula and Other Matters) of NSCC's Rules & Procedures ("Rules") to revise the ECP charge by enhancing the methodology for calculating the charge to (1) compare a member's applicable capital amounts with the amount it contributes to the Clearing Fund that represents its volatility charge, (2) for members that are broker-dealers, use net capital amounts rather than excess net capital amounts in the calculation of the ECP charge; and for all other members, use equity capital in the calculation of the ECP charge, and (3) establish a cap of 2.0 for the Excess Capital Ratio that is used in calculating a member's ECP

<sup>4</sup> Comments are available at <https://www.sec.gov/comments/sr-nsc-2022-005/srnsc2022005.htm>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> Securities Exchange Act Release No. 95245 (July 11, 2022), 87 FR 42523 (July 15, 2022) (SR-NSCC-2022-005).

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).