

## DEPOSITORY TRUST & CLEARING CORPORATION

### INFORMATION STATEMENT ON RIGHT OF USE OF FINANCIAL INSTRUMENTS UNDER A SECURITY INTEREST WHICH COULD QUALIFY AS A SECURITY COLLATERAL ARRANGEMENT

#### 1. INTRODUCTION

- 1.1 The Corporation is providing this Information Statement to Members and Participants that are established in the EU or the UK or acting through a branch in the EU or the UK, because where Members provide Financial Instruments to the Corporation by way of collateral, the Rules provide for the Corporation to take a security interest over them which could qualify as a Security Collateral Arrangement, and which would give the Corporation a Right of Use (rehypothecation) over such collateral.
- 1.2 This Information Statement is being provided solely to comply with Article 15 of the EU SFTR and Article 15 of the UK SFTR, as appropriate, by informing the Members concerned of the general risks and consequences that may be involved in consenting to a Right of Use of Financial Instruments provided as collateral under a security interest pursuant to the Rules, which could qualify as a Security Collateral Arrangement. This Information Statement does not address other risks or consequences that may be involved, in particular those that may arise as a result of a Member's particular circumstances. It does not constitute, and should not be relied on as, legal, financial, tax, accounting or other advice. Members should seek and rely on their own advice on matters covered by this Information Statement.
- 1.3 In this Information Statement:
- 1.3.1 "**Corporation**" means The Depository Trust Company ("**DTC**"), The Fixed Income Clearing Corporation ("**FICC**") or The National Securities Clearing Corporation ("**NSCC**"), as applicable;
- 1.3.2 "**EU SFTR**" means Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (as amended from time to time);
- 1.3.3 "**Financial Instruments**" has the meaning given to it in the EU SFTR or the UK SFTR, as appropriate, and includes transferable securities, money market instruments and units in collective investment undertakings;
- 1.3.4 "**Member**" means:
- (a) a 'Participant' of DTC, as defined in the DTC Rules;
  - (b) a 'Member' of FICC, as defined in the FICC Rules; or
  - (c) a 'Member' of NSCC, as defined in the NSCC Rules,

as applicable;<sup>1</sup>

- 1.3.5 **"Right of Use"** means any right the Corporation has under the Rules to use, in its own name and on its own account or the account of another counterparty, Financial Instruments received by the Corporation by way of collateral under a security interest, which could qualify as a Security Collateral Arrangement;
- 1.3.6 **"Rules"** means the DTC Rules, the FICC Rules and the NSCC Rules (as amended from time to time), as applicable;
- 1.3.7 **"Security Collateral Arrangement"** means:
- (a) where the Member is established in the EU or acts through a branch in the EU, an arrangement under which the Member, as collateral provider, provides Financial Instruments by way of security in favour of, or to, the Corporation, as collateral taker, and where the full ownership of the Financial Instruments remains with the collateral provider when the security right is established; or
  - (b) where the Member is established in the UK or acts through a branch in the UK, an agreement or arrangement, evidenced in writing, where:
    - (i) the purpose of the agreement or arrangement is to secure the relevant financial obligations owed to the Corporation, as collateral taker;
    - (ii) the Member, as collateral provider, creates or there arises a security interest in Financial Instruments, to secure those obligations; and
    - (iii) the Financial Instruments are delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral taker or a person acting on its behalf; any right of the collateral provider to substitute Financial Instruments of the same or greater value or withdraw excess Financial Instruments or to collect the proceeds of credit claims until further notice shall not prevent Financial Instruments being in the possession or under the control of the collateral taker.
- 1.3.8 **"UK SFTR"** means Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 as it forms part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 (as amended from time to time).

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<sup>1</sup> If and to the extent the Rules applicable to the subject matter of this Information Statement apply to other membership types, the term "Member" shall be deemed to also include such Members.

## 2. RE-USE RISKS AND CONSEQUENCES

- 2.1 The Corporation draws each Member's attention to the following general risks and consequences that may be involved in consenting to a Right of Use of Financial Instruments provided as collateral under a security interest under the Rules, which could qualify as a Security Collateral Arrangement. Where the Corporation exercises that Right of Use:
- 2.1.1 the Member's rights, including any proprietary rights that the Member may have had, in those Financial Instruments will be replaced by an unsecured contractual claim for delivery of equivalent Financial Instruments subject to the terms of the security interest;
  - 2.1.2 in the event of the Corporation's insolvency or default, the Member's claim against the Corporation for delivery of equivalent Financial Instruments will not be secured and will be subject to the terms of the Rules, the security interest and applicable law and, accordingly, the Member may not receive such equivalent Financial Instruments or recover the full value of the Financial Instruments (although the Member's exposure may be reduced to the extent that the Member has liabilities to the Corporation which can be set off or netted against or discharged by reference to the Corporation's obligation to deliver equivalent Financial Instruments to the Member) and the Corporation's liability to the Member in respect of that claim may be transferred to a third party;
  - 2.1.3 as a result of the Member ceasing to have a proprietary interest in those Financial Instruments the Member will not be entitled to exercise any voting, consent or similar rights attached to the Financial Instruments, and even if the Corporation has agreed to exercise voting, consent or similar rights attached to any equivalent Financial Instruments in accordance with the Member's instructions or the security interest entitles the Member to notify the Corporation that the equivalent Financial Instruments to be delivered by the Corporation to the Member should reflect the Member's instructions with respect to the subject matter of such vote, consent or exercise of rights, in the event that the Corporation does not hold and is not able to readily obtain equivalent Financial Instruments, the Corporation may not be able to comply (subject to any other solution that may have been agreed between the parties);
  - 2.1.4 in the event that the Corporation is not able to readily obtain equivalent Financial Instruments to deliver to the Member at the time required: the Member may be unable to fulfil its settlement obligations under a hedging or other transaction the Member has entered into in relation to those Financial Instruments; a counterparty, exchange or other person may exercise a right to buy-in the relevant Financial Instruments; and the Member may be unable to exercise rights or take other action in relation to those Financial Instruments;
  - 2.1.5 the Member will not be entitled to receive any dividends, coupon or other payments, interests or rights (including securities or property accruing or offered at any time) payable in relation to those Financial Instruments, although the express written terms of the security interest may provide for the Member to receive or be credited with a payment by reference to such dividend, coupon or other payment (a "**Manufactured Payment**");

- 2.1.6 subject to any express agreement between the Member and the Corporation, the Corporation will have no obligation to inform the Member of any corporate events or actions in relation to those Financial Instruments;
- 2.1.7 the Corporation's exercise of a Right of Use in respect of any Financial Instruments provided to the Corporation by the Member and the delivery by the Corporation to the Member of equivalent Financial Instruments may give rise to tax consequences that differ from the tax consequences that would have otherwise applied in relation to the holding by the Member or by the Corporation for the Member's account of those Financial Instruments; and
- 2.1.8 where the Member receives or is credited with a Manufactured Payment, the Member's tax treatment may differ from its tax treatment in respect of the original dividend, coupon or other payment in relation to those Financial Instruments.