

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="51"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2018"/> - * <input type="text" value="008"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by National Securities Clearing Corporation  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input checked="" type="checkbox"/> 19b-4(f)(4)	<input type="checkbox"/> 19b-4(f)(6)
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Amend the Clearing Agency Policy on Capital Requirements and the Clearing Agency Capital Replenishment Plan

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * <input type="text" value="Jacqueline"/>	Last Name * <input type="text" value="Chezar"/>
Title * <input type="text" value="Executive Director and Associate General Counsel"/>	
E-mail * <input type="text" value="jfarinella@dtcc.com"/>	
Telephone * <input type="text" value="(212) 855-3216"/>	Fax <input type="text"/>

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date <input type="text" value="10/04/2018"/>	<input type="text" value="Managing Director and Deputy General Counsel"/>
By <input type="text" value="Nikki Poulos"/>	<input type="text" value="npoulos@dtcc.com"/>

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

## 1. Text of Proposed Rule Change

(a) The proposed rule change would revise (i) the Clearing Agency Policy on Capital Requirements (“Capital Policy” or “Policy”) of National Securities Clearing Corporation (“NSCC”) and its affiliates, The Depository Trust Company (“DTC”) and Fixed Income Clearing Corporation (“FICC,” and together with DTC and NSCC, the “Clearing Agencies”); and (ii) the Clearing Agency Capital Replenishment Plan (“Capital Replenishment Plan” or “Plan”) of the Clearing Agencies. In particular, the proposed revisions to the Capital Policy and Capital Replenishment Plan would (1) correct typographical errors and make other technical revisions to correct and simplify statements in the Policy and Plan; (2) replace references in the Policy and Plan to the “Credit Risk Capital Requirement” with the “Corporate Contribution;” and (3) update references in the Policy to the Recovery & Wind-down Plans of each of the Clearing Agencies, which were recently adopted by the Clearing Agencies, as described in greater detail below.

(b) Not applicable.

(c) Not applicable.

## 2. Procedures of the Clearing Agency

The proposed rule change was approved by the Board of Directors of each of DTC, FICC, and NSCC (collectively, “Boards”) at meetings duly called and held on June 20, 2018.

## 3. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

### (a) Purpose

The Clearing Agencies are proposing to revise the Capital Policy and Capital Replenishment Plan, which were adopted by the Clearing Agencies in July 2017<sup>1</sup> and are maintained by the Clearing Agencies in compliance with Rule 17Ad-22(e)(15) under the Securities Exchange Act of 1934 (“Act”).<sup>2</sup>

### *Overview of the Capital Policy and Capital Replenishment Plan*

The Capital Policy sets forth the manner in which each Clearing Agency identifies, monitors, and manages its general business risk with respect to the requirement to hold sufficient liquid net assets (“LNA”) funded by equity to cover potential general business losses so the Clearing Agency can continue operations and services as a going concern if such losses materialize.<sup>3</sup> The amount of LNA funded by equity to be held by each of the Clearing Agencies

<sup>1</sup> See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR-DTC-2017-003, SR-FICC-2017-007, SR-NSCC-2017-004).

<sup>2</sup> 17 CFR 240.17Ad-22(e)(15).

<sup>3</sup> Id.

for this purpose is defined in the Policy as the General Business Risk Capital Requirement. The Policy provides that the General Business Risk Requirement is calculated for each Clearing Agency as the greatest of three separate calculations – (1) an amount based on that Clearing Agency’s general business risk profile (“Risk-Based Capital Requirement”), (2) an amount based on the time estimated to execute a recovery or orderly wind-down of the critical operations of that Clearing Agency (“Recovery/Wind-down Capital Requirement”), and (3) an amount based on an analysis of that Clearing Agency’s estimated operating expenses for a six month period (“Operating Expense Capital Requirement”). On an annual basis, each of these three capital requirements are measured, and the General Business Risk Capital Requirement for each Clearing Agency are determined as the greatest of these calculations.

Currently, the Capital Policy also addresses how each Clearing Agency maintains a portion of retained earnings as LNA funded by equity as its Credit Risk Capital Requirement, as a part of its management of credit risk<sup>4</sup> and pursuant to their respective rules.<sup>5</sup> These resources are maintained to address losses due to a participant default, and are held in addition to the LNA funded by equity held by each of the Clearing Agencies as its General Business Risk Capital Requirement. The Capital Policy describes how each Clearing Agency’s General Business Risk Capital Requirement and Credit Risk Capital Requirement fit within the Clearing Agencies’ Capital Framework, where the Total Capital Requirement of each Clearing Agency is calculated as the sum of its General Business Risk Capital Requirement and Credit Risk Capital Requirement.

The Policy also provides a plan for the replenishment of capital through the Capital Replenishment Plan. The Capital Replenishment Plan was adopted by the Clearing Agencies as a plan for the replenishment of capital by each Clearing Agency should its equity fall close to or below the amount being held as its Total Capital Requirement pursuant to the Capital Policy. The Capital Replenishment Plan identifies the circumstances that would trigger implementation of the Plan; the roles, responsibilities, and guiding principles for implementation of the Plan; and an overview and description of each of the tools that may be used to replenish capital.

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<sup>4</sup> LNA funded by equity held as the Clearing Agencies’ Credit Risk Capital Requirement is held in addition to resources held by the Clearing Agencies for credit risk in compliance with Rule 17Ad-22(e)(4) under the Act and in addition to resources held by the Clearing Agencies for liquidity risk in compliance with Rule 17Ad-22(e)(7). 17 CFR 240.17Ad-22(e)(4), (7).

<sup>5</sup> The Rules, By-laws and Organizational Certificate of DTC (“DTC Rules”), the Rulebook of the Government Securities Division of FICC (“GSD Rules”), the Clearing Rules of the Mortgage-Backed Securities Division of FICC (“MBSD Rules”), or the Rules & Procedures of NSCC (“NSCC Rules,” together with the DTC Rules, GSD Rules and MBSD Rules, the “Clearing Agencies’ Rules” or “Rules”), available at <http://dtcc.com/legal/rules-and-procedures>.

### ***Proposed Revisions to the Capital Policy and Capital Replenishment Plan***

As described in greater detail below, the Clearing Agencies are proposing to make certain revisions to the Capital Policy and Capital Replenishment Plan.

First, the proposed revisions would correct typographical errors and make other technical revisions to correct and simplify statements in the Capital Policy and Capital Replenishment Plan. Second, the proposed revisions would replace references to the “Credit Risk Capital Requirement” with “Corporate Contribution.” This proposed change would reflect the implementation of recent revisions to the Clearing Agencies’ Rules regarding allocation of losses.<sup>6</sup> Finally, the proposed revisions would update the description of the calculation of the Recovery/Wind-down Capital Requirement in the Capital Policy to clarify that the Recovery & Wind-down Plans of each of the Clearing Agencies have been adopted by the Clearing Agencies.<sup>7</sup>

These proposed revisions are designed to enhance the clarity of the Policy and Plan and help ensure that they continue to operate as intended.

#### *1. Technical Revisions*

NSCC is proposing technical revisions to the descriptions within the Capital Policy and Capital Replenishment Plan that would correct typographical errors, including, for example, removing a phrase that was incorrectly repeated in the same sentence. These revisions would also correct an error in Section 3 of the Policy, where the document was incorrectly referred to as the Plan.

Such revisions would also update the documents. For example, the proposed changes would replace references in the Capital Policy and Capital Replenishment Plan to the Finance/Capital Committee of the Boards, which was disbanded September 2017, with the Boards, which has taken on the responsibilities of this Committee set forth in the Policy and Plan. These revisions would also include updating the Capital Replenishment Plan to revise the name of the “Capital Contributions to DTCC Subsidiaries and Joint Ventures Policy” to the new name of this document, the “Capital Contributions Policy.”<sup>8</sup>

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<sup>6</sup> See Securities Exchange Act Release Nos. 83971 (August 28, 2018), 83 FR 44977 (September 4, 2018) (SR-NSCC-2017-018); 83952 (August 27, 2018), 83 FR 44354 (August 30, 2018) (SR-NSCC-2017-806).

<sup>7</sup> See Securities Exchange Act Release Nos. 83974 (August 28, 2018), 83 FR 44988 (September 4, 2018) (SR-NSCC-2017-017); 83955 (August 27, 2018), 83 FR 44340 (August 30, 2018) (SR-NSCC-2017-805).

<sup>8</sup> This document is an internal policy that governs how The Depository Trust & Clearing Corporation may invest capital in its subsidiaries, including the Clearing Agencies, as well as affiliated joint ventures and non-affiliated companies.

Finally, the proposed revisions would also simplify the descriptions in these documents. For example, these revisions would add a defined term for the Clearing Agencies' Rules to the Policy in order to simplify references to such rules and procedures in this document.

## 2. *Addition of Corporate Contribution*

The proposed revisions would also replace references in the Capital Policy and Capital Replenishment Plan to the "Credit Risk Capital Requirement" with the "Corporate Contribution." Currently, the Capital Policy describes how each Clearing Agency maintains a portion of retained earnings as LNA funded by equity as its Credit Risk Capital Requirement, in accordance with their respective Rules. Recently, the Clearing Agencies implemented revisions to their respective Rules to enhance the process by which they may allocate losses to their participants if the size of the losses exceed their prefunded resources.<sup>9</sup> Such revisions included an amendment to the calculation and application of the amount of LNA funded by equity that are currently referred to in the Capital Policy and Capital Replenishment Plan as the Credit Risk Capital Requirement.

Specifically, the NSCC Rules previously provided that NSCC would contribute no less than 25 percent of its retained earnings (or such higher amount as the NSCC Board of Directors shall determine) to a loss or liability as the result of the failure of a defaulting member that is not satisfied by the defaulting member's Clearing Fund deposit. Pursuant to these recent changes, the NSCC Rules provide that an amount equal to 50 percent of NSCC's General Business Risk Capital Requirement (as such amount is defined in the Capital Policy), or such greater amount as the NSCC Board of Directors may determine, ("Corporate Contribution") may be used to address unsatisfied losses or liabilities arising either from a member default or a non-default event. The Corporate Contribution applied to any losses arising from events that may occur during the next 250 business days would be reduced to the remaining unused portion of Corporate Contribution, if any.<sup>10</sup>

The amendments to the calculation and application of the resources that are now referred to as the Corporate Contribution did not change how these resources are described within the Policy or the Plan. The Corporate Contribution continues to represent resources maintained by the Clearing Agencies to address losses due to a participant default, as a part of their management of credit risk.<sup>11</sup> These resources also are still held in addition to the LNA funded by equity held by each of the Clearing Agencies as its General Business Risk Capital Requirement.

Therefore, the Capital Policy and Capital Replenishment Plan would be revised to replace references to the Credit Risk Capital Requirement with references to the Corporate Contribution, and no other changes are needed to the description of this amount.

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<sup>9</sup> Supra note 6.

<sup>10</sup> See supra notes 5 and 6.

<sup>11</sup> As noted above, unlike the resources referred to in the Policy and Plan as the Credit Risk Capital Requirement, the Corporate Contribution would also be available to the Clearing Agencies to address losses due to events other than a participant default.

3. *Update References to the Recovery & Wind-down Plans of the Clearing Agencies*

The proposed revisions would also update the Capital Policy to make clear that the Recovery & Wind-down Plans of the Clearing Agencies have been adopted by the Clearing Agencies.<sup>12</sup> Such references are currently made in connection with the description of the calculation of the Recovery/Wind-down Capital Requirement.

The Recovery/Wind-down Capital Requirement is an amount based on the time estimated to execute a recovery or orderly wind-down of the critical operations of that Clearing Agency and is used by the Clearing Agencies to determine their General Business Risk Capital Requirement. Each of the Clearing Agencies recently adopted a Recovery & Wind-down Plan, which provide plans for the recovery and orderly wind-down of each of the Clearing Agencies necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.<sup>13</sup> The Recovery & Wind-down Plans each include an analysis of the calculation of the Recovery/Wind-down Capital Requirement, based on the formula that is set forth in the Capital Policy.

The Clearing Agencies are proposing to revise the Capital Policy to make clear that the Recovery & Wind-down Plans have now been adopted by the Clearing Agencies.

(b) Statutory Basis

The Clearing Agencies believe that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Clearing Agencies believe that the Capital Policy and the Capital Replenishment Plan are both consistent with Section 17A(b)(3)(F) of the Act<sup>14</sup> and Rule 17Ad-22(e)(15) under the Act,<sup>15</sup> for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of the Clearing Agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the Clearing Agency or for which it is responsible.<sup>16</sup> Together, the Capital Policy and the Capital Replenishment Plan are designed to ensure that each of the Clearing Agencies hold sufficient LNA funded by equity to cover potential general business losses so that it can continue the prompt and accurate clearance and settlement of securities transactions and can continue to assure the safeguarding of securities and funds which are in its custody or control or for which it

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<sup>12</sup> Supra note 7.

<sup>13</sup> Id.

<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>15</sup> 17 CFR 240.17Ad-22(e)(15).

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(F).

is responsible if those losses materialize. By correcting errors and updating Capital Policy and Capital Replenishment Plan to be consistent with recent changes implemented by the Clearing Agencies, the proposed revisions would allow the Clearing Agencies to maintain these documents to operate in the way they were intended. Therefore, such proposed revisions would be consistent with the requirements of Section 17A(b)(3)(F) of the Act.<sup>17</sup>

Rule 17Ad-22(e)(15) requires the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage their respective general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the Clearing Agencies can continue operations and services as a going concern if those losses materialize.<sup>18</sup> As originally implemented, the Capital Policy and the Capital Replenishment Plan were designed to meet the requirements of Rule 17Ad-22(e)(15) under the Act.<sup>19</sup> As stated above, the proposed revisions would update the Capital Policy and Capital Replenishment Plan to be consistent with recent changes implemented by the Clearing Agencies. In this way, the proposed changes would allow the Clearing Agencies to maintain these documents in a way that to meet these requirements. Therefore, such proposed revisions would be consistent with the requirements of Rule 17Ad-22(e)(15) under the Act.<sup>20</sup>

#### **4. Clearing Agency's Statement on Burden on Competition**

Each of the Clearing Agencies believes that none of the proposed revisions to the Capital Policy and the Capital Replenishment Plan would have any impact, or impose any burden, on competition. The Policy and the Plan are maintained by the Clearing Agencies in order to satisfy their regulatory requirements and generally reflect internal tools and procedures. Tools and procedures that have a direct impact on the rights, responsibilities or obligations of members or participants of the Clearing Agencies are reflected in the Clearing Agencies' Rules. Accordingly, the Capital Policy and Capital Replenishment Plan themselves are documents that enhance the Clearing Agencies' regulatory compliance and internal management and do not have any impact, or impose any burden, on competition.

The proposed revisions to correct and update the Capital Policy and Capital Replenishment Plan would not affect any changes on the fundamental purpose or operation of these documents and, as such, would also not have any impact, or impose any burden, on competition.

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<sup>17</sup> Id.

<sup>18</sup> 17 CFR 240.17Ad-22(e)(15).

<sup>19</sup> See supra note 1.

<sup>20</sup> 17 CFR 240.17Ad-22(e)(15).



**5. Clearing Agency’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

The Clearing Agencies have not solicited or received any written comments relating to this proposal. The Clearing Agencies will notify the Securities and Exchange Commission (“Commission”) of any written comments received by the Clearing Agencies.

**6. Extension of Time Period for Commission Action**

The Clearing Agencies do not consent to an extension of the time period specified in Section 19(b)(2) of the Act for Commission action.<sup>21</sup>

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

(a) The proposed rule change is to take effect pursuant to paragraph A of Section 19(b)(3) of the Act.<sup>22</sup>

(b) The proposed rule changes would permit the Clearing Agencies to correct and update the Capital Policy and Capital Replenishment Plan in connection with their ongoing maintenance and would not affect any material changes on the operation of these documents. As such, the proposed changes are concerned solely with the administration of the self-regulatory organization.<sup>23</sup>

(c) Not applicable.

(d) Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

While the proposed rule changes are not based on the rules of another self-regulatory organization or of the Commission, both the Capital Policy and the Capital Replenishment Plan are applicable to each of the Clearing Agencies, and each of the Clearing Agencies has filed similar proposed revisions to these documents concurrently with this filing.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

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<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f)(4).

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

Exhibit 1 – Not applicable.

Exhibit 1A – Notice of proposed rule change for publication in the Federal Register.

Exhibit 2 – Not applicable.

Exhibit 3 – Not applicable.

Exhibit 4 – Not applicable.

Exhibit 5a – Capital Policy. **Omitted and filed separately with the Commission. Confidential treatment of this Exhibit 5a pursuant to 17 CFR 240.24b-2 being requested.**

Exhibit 5b – Capital Replenishment Plan. **Omitted and filed separately with the Commission. Confidential treatment of this Exhibit 5b pursuant to 17 CFR 240.24b-2 being requested.**

**EXHIBIT 1A**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-[\_\_\_\_\_]; File No. SR-NSCC-2018-008)

[DATE]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Clearing Agency Policy on Capital Requirements and the Clearing Agency Capital Replenishment Plan

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 October \_\_, 2018, National Securities Clearing Corporation (“NSCC”) 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 by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4) thereunder.<sup>4</sup> The 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 (i) the Clearing Agency Policy on Capital Requirements (“Capital Policy” or “Policy”) of NSCC and its affiliates, The Depository Trust Company (“DTC”) and Fixed Income Clearing Corporation (“FICC,” and together with DTC and NSCC, the “Clearing Agencies”); and (ii) the

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(4).

Clearing Agency Capital Replenishment Plan (“Capital Replenishment Plan” or “Plan”) of the Clearing Agencies. In particular, the proposed revisions to the Capital Policy and Capital Replenishment Plan would (1) correct typographical errors and make other technical revisions to correct and simplify statements in the Policy and Plan; (2) replace references in the Policy and Plan to the “Credit Risk Capital Requirement” with the “Corporate Contribution;” and (3) update references in the Policy to the Recovery & Wind-down Plans of each of the Clearing Agencies, which were recently adopted by the Clearing Agencies, as described in greater detail 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

The Clearing Agencies are proposing to revise the Capital Policy and Capital Replenishment Plan, which were adopted by the Clearing Agencies in July 2017<sup>5</sup> and are

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<sup>5</sup> See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR-DTC-2017-003, SR-FICC-2017-007, SR-NSCC-2017-004).

maintained by the Clearing Agencies in compliance with Rule 17Ad-22(e)(15) under the Act.<sup>6</sup>

***Overview of the Capital Policy and Capital Replenishment Plan***

The Capital Policy sets forth the manner in which each Clearing Agency identifies, monitors, and manages its general business risk with respect to the requirement to hold sufficient liquid net assets (“LNA”) funded by equity to cover potential general business losses so the Clearing Agency can continue operations and services as a going concern if such losses materialize.<sup>7</sup> The amount of LNA funded by equity to be held by each of the Clearing Agencies for this purpose is defined in the Policy as the General Business Risk Capital Requirement. The Policy provides that the General Business Risk Requirement is calculated for each Clearing Agency as the greatest of three separate calculations – (1) an amount based on that Clearing Agency’s general business risk profile (“Risk-Based Capital Requirement”), (2) an amount based on the time estimated to execute a recovery or orderly wind-down of the critical operations of that Clearing Agency (“Recovery/Wind-down Capital Requirement”), and (3) an amount based on an analysis of that Clearing Agency’s estimated operating expenses for a six month period (“Operating Expense Capital Requirement”). On an annual basis, each of these three capital requirements are measured, and the General Business Risk Capital Requirement for each Clearing Agency are determined as the greatest of these calculations.

Currently, the Capital Policy also addresses how each Clearing Agency maintains a portion of retained earnings as LNA funded by equity as its Credit Risk Capital

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<sup>6</sup> 17 CFR 240.17Ad-22(e)(15).

<sup>7</sup> Id.

Requirement, as a part of its management of credit risk<sup>8</sup> and pursuant to their respective rules.<sup>9</sup> These resources are maintained to address losses due to a participant default, and are held in addition to the LNA funded by equity held by each of the Clearing Agencies as its General Business Risk Capital Requirement. The Capital Policy describes how each Clearing Agency's General Business Risk Capital Requirement and Credit Risk Capital Requirement fit within the Clearing Agencies' Capital Framework, where the Total Capital Requirement of each Clearing Agency is calculated as the sum of its General Business Risk Capital Requirement and Credit Risk Capital Requirement.

The Policy also provides a plan for the replenishment of capital through the Capital Replenishment Plan. The Capital Replenishment Plan was adopted by the Clearing Agencies as a plan for the replenishment of capital by each Clearing Agency should its equity fall close to or below the amount being held as its Total Capital Requirement pursuant to the Capital Policy. The Capital Replenishment Plan identifies the circumstances that would trigger implementation of the Plan; the roles, responsibilities, and guiding principles for implementation of the Plan; and an overview and description of each of the tools that may be used to replenish capital.

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<sup>8</sup> LNA funded by equity held as the Clearing Agencies' Credit Risk Capital Requirement is held in addition to resources held by the Clearing Agencies for credit risk in compliance with Rule 17Ad-22(e)(4) under the Act and in addition to resources held by the Clearing Agencies for liquidity risk in compliance with Rule 17Ad-22(e)(7). 17 CFR 240.17Ad-22(e)(4), (7).

<sup>9</sup> The Rules, By-laws and Organizational Certificate of DTC ("DTC Rules"), the Rulebook of the Government Securities Division of FICC ("GSD Rules"), the Clearing Rules of the Mortgage-Backed Securities Division of FICC ("MBSD Rules"), or the Rules & Procedures of NSCC ("NSCC Rules," together with the DTC Rules, GSD Rules and MBSD Rules, the "Clearing Agencies' Rules" or "Rules"), available at <http://dtcc.com/legal/rules-and-procedures>.

***Proposed Revisions to the Capital Policy and Capital Replenishment Plan***

As described in greater detail below, the Clearing Agencies are proposing to make certain revisions to the Capital Policy and Capital Replenishment Plan.

First, the proposed revisions would correct typographical errors and make other technical revisions to correct and simplify statements in the Capital Policy and Capital Replenishment Plan. Second, the proposed revisions would replace references to the “Credit Risk Capital Requirement” with “Corporate Contribution.” This proposed change would reflect the implementation of recent revisions to the Clearing Agencies’ Rules regarding allocation of losses.<sup>10</sup> Finally, the proposed revisions would update the description of the calculation of the Recovery/Wind-down Capital Requirement in the Capital Policy to clarify that the Recovery & Wind-down Plans of each of the Clearing Agencies have been adopted by the Clearing Agencies.<sup>11</sup>

These proposed revisions are designed to enhance the clarity of the Policy and Plan and help ensure that they continue to operate as intended.

*1. Technical Revisions*

NSCC is proposing technical revisions to the descriptions within the Capital Policy and Capital Replenishment Plan that would correct typographical errors, including, for example, removing a phrase that was incorrectly repeated in the same

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<sup>10</sup> See Securities Exchange Act Release Nos. 83971 (August 28, 2018), 83 FR 44977 (September 4, 2018) (SR-NSCC-2017-018); 83952 (August 27, 2018), 83 FR 44354 (August 30, 2018) (SR-NSCC-2017-806).

<sup>11</sup> See Securities Exchange Act Release Nos. 83974 (August 28, 2018), 83 FR 44988 (September 4, 2018) (SR-NSCC-2017-017); 83955 (August 27, 2018), 83 FR 44340 (August 30, 2018) (SR-NSCC-2017-805).

sentence. These revisions would also correct an error in Section 3 of the Policy, where the document was incorrectly referred to as the Plan.

Such revisions would also update the documents. For example, the proposed changes would replace references in the Capital Policy and Capital Replenishment Plan to the Finance/Capital Committee of the Boards, which was disbanded September 2017, with the Boards, which has taken on the responsibilities of this Committee set forth in the Policy and Plan. These revisions would also include updating the Capital Replenishment Plan to revise the name of the “Capital Contributions to DTCC Subsidiaries and Joint Ventures Policy” to the new name of this document, the “Capital Contributions Policy.”<sup>12</sup>

Finally, the proposed revisions would also simplify the descriptions in these documents. For example, these revisions would add a defined term for the Clearing Agencies’ Rules to the Policy in order to simplify references to such rules and procedures in this document.

## 2. *Addition of Corporate Contribution*

The proposed revisions would also replace references in the Capital Policy and Capital Replenishment Plan to the “Credit Risk Capital Requirement” with the “Corporate Contribution.” Currently, the Capital Policy describes how each Clearing Agency maintains a portion of retained earnings as LNA funded by equity as its Credit Risk Capital Requirement, in accordance with their respective Rules. Recently, the Clearing Agencies implemented revisions to their respective Rules to enhance the process by which they may allocate losses to their participants if the size of the losses exceed

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<sup>12</sup> This document is an internal policy that governs how The Depository Trust & Clearing Corporation may invest capital in its subsidiaries, including the Clearing Agencies, as well as affiliated joint ventures and non-affiliated companies.



their prefunded resources.<sup>13</sup> Such revisions included an amendment to the calculation and application of the amount of LNA funded by equity that are currently referred to in the Capital Policy and Capital Replenishment Plan as the Credit Risk Capital Requirement.

Specifically, the NSCC Rules previously provided that NSCC would contribute no less than 25 percent of its retained earnings (or such higher amount as the NSCC Board of Directors shall determine) to a loss or liability as the result of the failure of a defaulting member that is not satisfied by the defaulting member's Clearing Fund deposit. Pursuant to these recent changes, the NSCC Rules provide that an amount equal to 50 percent of NSCC's General Business Risk Capital Requirement (as such amount is defined in the Capital Policy), or such greater amount as the NSCC Board of Directors may determine, ("Corporate Contribution") may be used to address unsatisfied losses or liabilities arising either from a member default or a non-default event. The Corporate Contribution applied to any losses arising from events that may occur during the next 250 business days would be reduced to the remaining unused portion of Corporate Contribution, if any.<sup>14</sup>

The amendments to the calculation and application of the resources that are now referred to as the Corporate Contribution did not change how these resources are described within the Policy or the Plan. The Corporate Contribution continues to represent resources maintained by the Clearing Agencies to address losses due to a

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<sup>13</sup> Supra note 10.

<sup>14</sup> See supra notes 9 and 10.

participant default, as a part of their management of credit risk.<sup>15</sup> These resources also are still held in addition to the LNA funded by equity held by each of the Clearing Agencies as its General Business Risk Capital Requirement.

Therefore, the Capital Policy and Capital Replenishment Plan would be revised to replace references to the Credit Risk Capital Requirement with references to the Corporate Contribution, and no other changes are needed to the description of this amount.

3. *Update References to the Recovery & Wind-down Plans of the Clearing Agencies*

The proposed revisions would also update the Capital Policy to make clear that the Recovery & Wind-down Plans of the Clearing Agencies have been adopted by the Clearing Agencies.<sup>16</sup> Such references are currently made in connection with the description of the calculation of the Recovery/Wind-down Capital Requirement.

The Recovery/Wind-down Capital Requirement is an amount based on the time estimated to execute a recovery or orderly wind-down of the critical operations of that Clearing Agency and is used by the Clearing Agencies to determine their General Business Risk Capital Requirement. Each of the Clearing Agencies recently adopted a Recovery & Wind-down Plan, which provide plans for the recovery and orderly wind-down of each of the Clearing Agencies necessitated by credit losses, liquidity shortfalls,

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<sup>15</sup> As noted above, unlike the resources referred to in the Policy and Plan as the Credit Risk Capital Requirement, the Corporate Contribution would also be available to the Clearing Agencies to address losses due to events other than a participant default.

<sup>16</sup> Supra note 11.

losses from general business risk, or any other losses.<sup>17</sup> The Recovery & Wind-down Plans each include an analysis of the calculation of the Recovery/Wind-down Capital Requirement, based on the formula that is set forth in the Capital Policy.

The Clearing Agencies are proposing to revise the Capital Policy to make clear that the Recovery & Wind-down Plans have now been adopted by the Clearing Agencies.

## 2. Statutory Basis

The Clearing Agencies believe that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Clearing Agencies believe that the Capital Policy and the Capital Replenishment Plan are both consistent with Section 17A(b)(3)(F) of the Act<sup>18</sup> and Rule 17Ad-22(e)(15) under the Act,<sup>19</sup> for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of the Clearing Agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the Clearing Agency or for which it is responsible.<sup>20</sup> Together, the Capital Policy and the Capital Replenishment Plan are designed to ensure that each of the Clearing Agencies hold sufficient LNA funded by equity to cover potential general business losses so that it can continue the prompt and accurate clearance and settlement of securities transactions and can continue to assure the safeguarding of securities and

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<sup>17</sup> Id.

<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>19</sup> 17 CFR 240.17Ad-22(e)(15).

<sup>20</sup> 15 U.S.C. 78q-1(b)(3)(F).

funds which are in its custody or control or for which it is responsible if those losses materialize. By correcting errors and updating the Capital Policy and Capital Replenishment Plan to be consistent with recent changes implemented by the Clearing Agencies, the proposed revisions would allow the Clearing Agencies to maintain these documents to operate in the way they were intended. Therefore, such proposed revisions would be consistent with the requirements of Section 17A(b)(3)(F) of the Act.<sup>21</sup>

Rule 17Ad-22(e)(15) requires the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage their respective general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the Clearing Agencies can continue operations and services as a going concern if those losses materialize.<sup>22</sup> As originally implemented, the Capital Policy and the Capital Replenishment Plan were designed to meet the requirements of Rule 17Ad-22(e)(15) under the Act.<sup>23</sup> As stated above, the proposed revisions would update the Capital Policy and Capital Replenishment Plan to be consistent with recent changes implemented by the Clearing Agencies. In this way, the proposed changes would allow the Clearing Agencies to maintain these documents in a way that to meet these requirements. Therefore, such proposed revisions would be consistent with the requirements of Rule 17Ad-22(e)(15) under the Act.<sup>24</sup>

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<sup>21</sup> Id.

<sup>22</sup> 17 CFR 240.17Ad-22(e)(15).

<sup>23</sup> See supra note 5.

<sup>24</sup> 17 CFR 240.17Ad-22(e)(15).

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

Each of the Clearing Agencies believes that none of the proposed revisions to the Capital Policy and the Capital Replenishment Plan would have any impact, or impose any burden, on competition. The Policy and the Plan are maintained by the Clearing Agencies in order to satisfy their regulatory requirements and generally reflect internal tools and procedures. Tools and procedures that have a direct impact on the rights, responsibilities or obligations of members or participants of the Clearing Agencies are reflected in the Clearing Agencies' Rules. Accordingly, the Capital Policy and Capital Replenishment Plan themselves are documents that enhance the Clearing Agencies' regulatory compliance and internal management and do not have any impact, or impose any burden, on competition.

The proposed revisions to correct and update the Capital Policy and Capital Replenishment Plan would not affect any changes on the fundamental purpose or operation of these documents and, as such, would also not have any impact, or impose any burden, on competition.

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

The Clearing Agencies have not solicited or received any written comments relating to this proposal. The Clearing Agencies will notify the Commission of any written comments received by the Clearing Agencies.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>25</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>26</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2018-008 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-2018-008. This file number should be included on the subject line if e-mail is used. To help the Commission process

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<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</sup> 17 CFR 240.19b-4(f).

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 NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-NSCC-2018-008 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(12).

TEXT OF PROPOSED RULE CHANGE

**Bold and underlined** text indicates proposed added language.

**~~Bold and strikethrough~~** text indicates proposed deleted language.



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