

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-91587; File Nos. SR-DTC-2021-002; SR-FICC-2021-001; SR-NSCC-2021-003)

April 16, 2021

Self-Regulatory Organizations; The Depository Trust Company; Fixed Income Clearing Corporation; National Securities Clearing Corporation; Order Approving Proposed Rule Changes to Revise the Clearing Agency Investment Policy

On March 8, 2021, The Depository Trust Company (“DTC”), Fixed Income Clearing Corporation (“FICC”), and National Securities Clearing Corporation (“NSCC,” each a “Clearing Agency,” and collectively, the “Clearing Agencies”), filed with the Securities and Exchange Commission (“Commission”) proposed rule changes SR-DTC-2021-002; SR-FICC-2021-001; SR-NSCC-2021-003, respectively, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.²

The proposed rule changes were published for comment in the Federal Register on March 16, 2021,³ and the Commission received no comment letters regarding the proposed rule changes. For the reasons discussed below, the Commission is granting approval of the proposed rule changes.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release Nos. 91291 (March 10, 2021), 86 Fed. Reg. 14500 (March 16, 2021) (SR-DTC-2021-002) (“DTC Notice of Filing”); 91292 (March 10, 2021), 86 Fed. Reg. 14503 (March 16, 2021) (SR-FICC-2021-001) (“FICC Notice of Filing”); and 91293 (March 10, 2021), 86 Fed. Reg. 14506 (March 16, 2021) (SR-NSCC2021-003) (“NSCC Notice of Filing”).

⁴ Capitalized terms not defined herein are defined in the DTC Rules, By-laws and Organization Certificate (“DTC Rules”), the Rules & Procedures of NSCC (“NSCC Rules”), the Clearing Rules of the Mortgage-Backed Securities Division of FICC (“MBSD Rules”), or the Rulebook of the Government Securities Division of FICC (“GSD Rules”), as applicable, available at <http://dtcc.com/legal/rules-and-procedures>.

I. DESCRIPTION OF THE PROPOSED RULE CHANGES

A. Background

Each Clearing Agency has established a Clearing Agency Investment Policy (“Investment Policy”),⁵ which governs the management, custody, and investment of cash deposited to the DTC Participants Fund and the respective NSCC and FICC Clearing Funds,⁶ the proprietary liquid net assets (cash and cash equivalents) of the Clearing Agencies, and other funds held by the Clearing Agencies pursuant to their respective rules. The Investment Policy states that it would adhere to a conservative investment philosophy that places the highest priority on maximizing the liquidity and avoiding risk to the funds in the custody of the Clearing Agencies.⁷

The Investment Policy includes, generally, a glossary of key terms, the roles and responsibilities of DTCC staff in administering the Investment Policy, guiding principles for investments, sources of investable funds, allowable investments of those funds, limitations on such investments, authority required for those investments, and authority required to exceed established investment limits.⁸ In particular, the Investment Policy provides that allowable investments include bank deposits, reverse repurchase

⁵ See Securities Exchange Act Release No. 79528 (December 12, 2016), 81 Fed. Reg. 91232 (December 16, 2016) (SR-DTC-2016-007; SR-FICC-2016-005; SR-NSCC-2016-003) (“2016 Framework Order”).

⁶ The DTC Participants Fund and the respective Clearing Funds of NSCC and FICC are described further in DTC Rules, NSCC Rules, MBS Rules, GSD Rules, respectively. See DTC Rules, Rule 4 (Participants Fund and Participants Investment); NSCC Rules, Rule 4 (Clearing Fund); GSD Rules, Rule 4 (Clearing Fund and Loss Allocation); MBS Rules, Rule 4 (Clearing Fund and Loss Allocation).

⁷ See 2016 Framework Order, 81 Fed. Reg. at 91233.

⁸ See 2016 Framework Order, 81 Fed. Reg. at 91232-33.

agreements, direct obligations of the U.S. government, money market mutual funds, high-grade corporate debt, and hedge transactions.⁹

B. Settling Bank Deposit Investment Limits

The Investment Policy sets forth the investment limits applicable to bank deposit investments. Currently, bank deposit investment limits are determined based on the bank counterparty's external credit rating.¹⁰

The Clearing Agencies propose to revise the methodology for setting investment limits on bank deposits with a particular counterparty by including a consideration of the size of the bank counterparty, measured as the total shareholders' equity capital, in this calculation. Under the proposed methodology, an investment limit for a bank deposit counterparty would continue to be based on the counterparty's credit rating, but would be the lower of (1) a percentage of its total shareholders' equity capital, and (2) the applicable dollar value that is currently in the Investment Policy. The proposed approach would take into account the size of a counterparty in setting investment limits rather than applying the same investment limits to each counterparty with the same credit rating without regard to the entity's size.

C. Description of Investable Funds of GSD

The Clearing Agencies also propose to amend their respective Investment Policy to revise the description of investable funds of GSD. The current term used in the Investment Policy, "GSD Forward Margin," would be changed to "GSD Forward Mark

⁹ See DTC Notice of Filing, 86 Fed. Reg. at 14501; FICC Notice of Filing, 86 Fed. Reg. at 14504; NSCC Notice of Filing, 86 Fed. Reg. at 14506.

¹⁰ See DTC Notice of Filing, 86 Fed. Reg. at 14501; FICC Notice of Filing, 86 Fed. Reg. at 14504; NSCC Notice of Filing, 86 Fed. Reg. at 14507.

Adjustment Payment.” The GSD Rules define these funds as “Forward Mark Adjustment Payment,”¹¹ and the Clearing Agencies represent that the proposed change is to harmonize the terms used in the Investment Policy with the GSD Rules, and prevent any confusion about which funds are investable by the Clearing Agencies pursuant to the Investment Policy.¹²

II. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Act¹³ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After careful consideration, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Clearing Agencies. In particular, the Commission finds that the proposed rule changes are consistent with Section 17A(b)(3)(F)¹⁴ of the Act and Rule 17Ad-22(e)(16) thereunder.¹⁵

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency be designed 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.¹⁶

¹¹ See GSD Rules, Rule 1 (Definitions).

¹² See DTC Notice of Filing, 86 Fed. Reg. at 14501; FICC Notice of Filing, 86 Fed. Reg. at 14504; NSCC Notice of Filing, 86 Fed. Reg. at 14507.

¹³ 15 U.S.C. 78s(b)(2)(C).

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 17 CFR 240.17Ad-22(e)(16).

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

The proposed changes would require the Clearing Agencies to consider the counterparty shareholders' equity capital in limiting investments for bank deposit investments. By considering not only the credit rating of a bank counterparty, but also the size of a bank counterparty in setting its bank deposit investment limit, the proposed change would help the Clearing Agencies to cap their exposure to smaller counterparties, measured by their shareholders' equity capital. In turn, the proposed changes should help the Clearing Agencies to continue to adhere to the prudent and conservative investment philosophy that places the highest priority on maximizing liquidity and risk avoidance.

In addition, the proposed changes would align the terminology used in the Investment Policy with the terminology used in the GSD Rules to clarify the investable funds that are subject to the Investment Policy. By eliminating inconsistent use of terminology, the proposed changes should help to improve the effectiveness of the Investment Policy.

Therefore, for the reasons stated above, the Commission believes that the proposed rule changes are designed to assure the safeguarding of securities and funds in the custody and control of the Clearing Agencies consistent with the requirements of Section 17A(b)(3)(F) of the Act.¹⁷

B. Consistency with Rule 17Ad-22(e)(16) under the Act

Rule 17Ad-22(e)(16) under the Act requires the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to safeguard the Clearing Agencies' own and their participants' assets, minimize the risk of

¹⁷ Id.

loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.¹⁸

As stated above, the proposed changes would require the Clearing Agencies to consider the counterparty shareholders' equity capital in limiting investment for bank deposit investments, and align the description of investable funds of GSD in the Investment Policy with the description of these funds in the GSD Rules to clarify the funds that are subject to the Investment Policy. By limiting the Clearing Agencies' exposure to smaller counterparties and removing any confusion about which funds are subject to the Investment Policy, the proposed changes are designed to strengthen the risk management objectives, and improve the clarity, of the Investment Policy.

Accordingly, the Commission believes that the proposed changes are reasonably designed to help safeguard the Clearing Agencies' own and their participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks, and is therefore consistent with Rule 17Ad-22(e)(16) under the Act.¹⁹

III. CONCLUSION

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act, and in particular, with the requirements of Section 17A of the Act,²⁰ and the rules and regulations promulgated thereunder.

¹⁸ 17 CFR 240.17Ad-22(e)(16).

¹⁹ Id.

²⁰ 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that proposed rule changes SR-DTC-2021-002, SR-FICC-2021-001, SR-NSCC-2021-003, be, and they hereby are, APPROVED.²²

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

J. Lynn Taylor
Assistant Secretary

²¹ 15 U.S.C. 78s(b)(2).

²² In approving the proposed rule changes, the Commission considered the proposals' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 17 CFR 200.30-3(a)(12).