

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-101764; File Nos. SR-DTC-2024-009; SR-FICC-2024-010; SR-NSCC-2024-006)

November 26, 2024

Self-Regulatory Organizations; National Securities Clearing Corporation; The Depository Trust Company; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change to Adopt the Clearing Agency Framework for Certain Requirements on Governance and Conflicts of Interest

I. INTRODUCTION

On August 15, 2024, National Securities Clearing Corporation (“NSCC”), The Depository Trust Company (“DTC”), and Fixed Income Clearing Corporation (“FICC,” each a subsidiary of The Depository Trust & Clearing Corporation (“DTCC”) and each a “Clearing Agency,” and collectively, the “Clearing Agencies”), filed with the Securities and Exchange Commission (“Commission”) proposed rule changes SR-NSCC-2024-006, SR-DTC-2024-009, and SR-FICC-2024-010, respectively, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder (“Proposed Rule Changes”).² The Proposed Rule Changes were published for comment in the *Federal Register* on September 3, 2024.³ The Commission has received no comments on the changes proposed. For the reasons discussed below, the Commission is approving the Proposed Rule Changes.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 100841 (Aug. 27, 2024), 89 FR 71646 (Sep. 3, 2024) (File No. SR-NSCC-2024-006) (“NSCC Notice of Filing”); Securities Exchange Act Release No. 100842 (Aug. 27, 2024), 89 FR 71597 (Sep. 3, 2024) (File No. SR-DTC-2024-009) (“DTC Notice of Filing”); Securities Exchange Act Release No. 100843 (Aug. 27, 2024), 89 FR 71593 (Sep. 3, 2024) (File No. SR-FICC-2024-010) (“FICC Notice of Filing”).

II. BACKGROUND

On November 16, 2023, the Commission adopted rules under the Act to improve the governance of clearing agencies registered with the Commission (“registered clearing agencies”) by reducing the likelihood that conflicts of interest may influence the board of directors or equivalent governing body (“board”) of a registered clearing agency.⁴ The rules identify certain responsibilities of the Board, increase transparency into board governance, and, more generally, improve the alignment of incentives among owners and participants of a registered clearing agency. The Commission adopted 17 CFR 240.17ad-25 (“Rule 17Ad-25”) under the Act to establish these new requirements for board governance and for the management of conflicts of interest by registered clearing agencies.

The Proposed Rule Changes would adopt a new framework entitled the “Clearing Agency Framework for Certain Requirements on Governance and Conflicts of Interest” (“Framework”) to outline the way in which the Clearing Agencies and their Boards of Directors (“Boards”) comply with certain sections of Rule 17Ad-25,⁵ specifically subsections (g), (h), (i), and (j).⁶

⁴ See Clearing Agency Governance and Conflicts of Interest, Exchange Act Release No. 98959 (Nov. 16, 2023), 88 FR 84454 (Dec. 5, 2023) (S7-21-22).

⁵ See NSCC Notice of Filing, 89 FR at 71646; DTC Notice of Filing, 89 FR at 71598; and FICC Notice of Filing, 89 FR at 71594, all at note 3 *supra*.

⁶ See 17 CFR 240.17ad-25(g), (h), (i) and (j).

III. DESCRIPTION OF THE PROPOSED RULE CHANGE

A. Section 1 and Section 2: Executive Summary and Framework Ownership and Change Management

Section 1 of the Proposed Rule Changes constitutes the executive summary.

Section 1 states that the Framework provides an outline for the way in which the Clearing Agencies and their Boards comply with the requirements of Rule 17Ad-25(g), (h), (i), and (j). It also states that the Clearing Agencies may develop policies, procedures, and other supplemental documentation to support execution of the Framework, and that, in the event of a conflict between this Framework and such other supplemental documentation, the Framework shall prevail. Section 1 further states that individuals elected to the DTCC Board of Directors are also elected to the Boards of each of the Clearing Agencies, and that the Framework is applicable to the directors of each of the Clearing Agencies and DTCC separately with respect to their role on each Board.

Section 2 of the Proposed Rule Changes covers Framework ownership and change management. The Framework would be owned and managed within the DTCC General Counsel's Office by an officer on behalf of each Clearing Agency. Section 2 states that any changes to the Framework shall be approved by either: (1) the Boards; (2) such Board committees as may be delegated authority by the Boards from time to time pursuant to their charters; or, (3) the General Counsel or Deputy General Counsels of the Clearing Agencies, pursuant to authority delegated by the Boards and with the advice and direction of the Framework owner. Section 2 also states that the Framework would be reviewed and approved annually by the Boards or duly authorized committees of the Boards.

B. Section 3: Conflicts of Interest

Section 3 of the Proposed Rules Changes describes how the Clearing Agencies comply with sections (g) and (h) of Rule 17ad-25. Rule 17Ad-25(g) requires each registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and document, and mitigate or eliminate existing or potential conflicts of interest in the decision-making process of the directors or senior managers of the registered clearing agency.⁷ Rule 17ad-25(h) requires each registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require a director of a registered clearing agency to document and inform the registered clearing agency promptly of the existence of any relationship or interest that could reasonably affect the independent judgment or decision-making of the director.⁸

The Proposed Rule Changes require directors to exercise their powers in good faith and in the best interests of the Clearing Agencies, rather than their own interests or the interests of another entity or person. The Proposed Rule Changes state that a conflict of interest is present whenever the interests of the Clearing Agencies compete with the interests of a director, the director's employer, or any other party with which a director is associated, or otherwise whenever a director's corporate or personal interests could be

⁷ See 17 CFR 240.17ad-25(g).

⁸ See 17 CFR 240.17ad-25(h)

viewed as affecting his or her objectivity or independent judgment in fulfilling the director's duties to the Clearing Agencies.

The Proposed Rule Changes state that directors are required to document and inform the Corporate Secretary of the Clearing Agencies promptly of the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director. The Corporate Secretary would then escalate any disclosure to the General Counsel for evaluation. If such disclosure is deemed to be an actual conflict of interest, the General Counsel would notify the Non-Executive Chairman of the Board and discuss how such conflict can be mitigated or eliminated. Upon identification of a conflict of interest, the Non-Executive Chairman, in consultation with the General Counsel, shall determine how such conflict should be addressed on a case-by-case basis. In certain cases, it may be advisable for the director to recuse themselves from any discussion or vote related to the matter. In other cases, where the conflict is limited or indirect, the Non-Executive Chairman, in consultation with the General Counsel, may determine that the conflict should be disclosed to the full Board of Directors, but that, in light of such disclosure to the Board, recusal of the director is unnecessary. The Proposed Rule Changes provide that there may be cases where a conflict is so significant or pervasive that the director would be unable to continue to serve on the Boards. In such instances, the Non-Executive Chairman and General Counsel would discuss with the Governance Committee. Any measures taken to address a conflict of interest would be documented by the Corporate Secretary's Office.

The Proposed Rule Changes state that all staff, including senior managers, must avoid activities or relationships that might affect objectivity in business decisions

throughout employment with the Clearing Agencies. All staff, including senior managers, are required to disclose a relationship or interest that reasonably could affect objectivity in business decisions for review and determination on the appropriate course of action. A course of action for a conflict of interest could include actions such as recusal of the staff member from the particular matter, such as a vendor selection process or disallowing a staff member from being on the board of directors of a Clearing Agency vendor or client. The course of action will be documented.

The Proposed Rule Changes also state that the Clearing Agencies maintain policies and procedures which provide that the Clearing Agencies identify and document existing or potential conflicts of interest in the decision-making process involving directors or senior managers of the Clearing Agencies and mitigate or eliminate and document the mitigation or elimination of such conflicts of interest.⁹

C. Section 4: Management of Risks from Relationships with Service Providers for Core Services

Section 4 of the Proposed Rule Changes describes how the Clearing Agencies comply with section (i) of Rule 17Ad-25. Rule 17Ad-25(i) requires each registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require senior management to manage the risks from relationships with service providers for core services.¹⁰ The Clearing Agencies would

⁹ As part of the Proposed Rule Changes, the Clearing Agencies filed certain materials as Exhibit 3: *DTCC Board Charter and Mission Statement; DTCC Board Code of Ethics and Conflict of Interest Policy; Corporate Secretary's Office Procedures for DTCC Director Conflicts of Interest and Independence Assessment; DTCC Risk Management Advisory Council Charter; and DTCC Gifts, Entertainment and Conflicts of Interest Policy and Procedures*. Pursuant to 17 CFR 240.24b-2, FICC requested confidential treatment of Exhibit 3.

¹⁰ See 17 CFR 240.17ad-25(i).

identify service providers for core services and would adopt the definition of “service provider for core services” from Rule 17Ad-25(a), which is “any person that, through a written service provider agreement for services provided to or on behalf of the registered clearing agency, on an ongoing basis, directly supports the delivery of clearance or settlement functionality or any other purposes material to the business of the registered clearing agency.”¹¹

Specifically, senior management would be required to: (1) evaluate and document the risks related to agreements with service providers for core services, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with the Clearing Agencies’ risk management framework;¹² and, (2) perform ongoing monitoring of the relationship and report to the Boards for their evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring, or if the risk or material issues identified cannot be remedied, senior management would be required to assess and document weaknesses or deficiencies in the relationship with the service provider for core services for submission to the Board.¹³ Service providers for core services can be external service providers or internal (i.e., intercompany affiliates such as DTCC or one of its subsidiaries). The Clearing Agencies employ a proportionate and risk-based approach adapted to the distinct characteristics and risks presented by these two different categories of service

¹¹ See 17 CFR 240.17ad-25(a).

¹² See NSCC Notice of Filing, 89 FR at 71648; DTC Notice of Filing, 89 FR at 71599; and FICC Notice of Filing, 89 FR at 71595, all at note 3 *supra*.

¹³ *Id.*

providers.¹⁴ Regarding internal service providers, deficiencies are assessed as part of the Clearing agencies' risk tolerance framework. Clearing Agencies and their affiliates are all held directly accountable by a common governance arrangement to a set of performance level and risk management standards based upon the Clearing Agencies' requirements.¹⁵ Regarding external service providers, deficiencies are assessed against criteria established by the Third Party Risk Department, who submits deficiency information to the Board or relevant Board committee. Because external service providers are not subject to the same governance arrangements and standards as intercompany affiliates, the Clearing Agencies must use different mechanisms (e.g., negotiating and enforcing express contractual terms) to ensure a comparable degree of risk management and monitoring. Given the difference in accountability mechanisms, the Clearing Agencies rely upon a dedicated third party risk management function to manage and monitor external relationship risks separately from the internal functions.¹⁶ Business owners of each service provider for core services are responsible for documenting any deficiencies.

The Proposed Rule Changes state that the Boards of the Clearing Agencies would: (1) review and approve the procedures regarding service providers for core services; (2) review and approve any agreement that would establish a relationship with a service providers for core services along with the required risk evaluation prepared by senior management; and, (3) evaluate any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

identified through senior management’s monitoring of service providers for core services.¹⁷

The Proposed Rule Changes also state that the Clearing Agencies currently maintain policies and procedures that manage risks related to service providers for core services.¹⁸

D. Section 5: Solicitation of Stakeholder Viewpoints on Material Developments in Risk Management and Operations

Rule 17Ad-25(j) requires each registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the board of directors to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders of the registered clearing agency on material developments in its governance and operations on a recurring basis.¹⁹ Section 5 of the Proposed Rule Changes states that in support of their compliance with Rule 17Ad-25(j), the Clearing Agencies have established various advisory councils (“Advisory Councils”) made up of representatives of the Clearing Agencies’ participants and other relevant stakeholders. In order to ensure appropriate stakeholders are consulted for different types of material developments at the Clearing Agencies, the Clearing Agencies have established a joint Advisory Council to consider material developments in risk management across the Clearing Agencies and separate business-line specific Advisory

¹⁷ *Id.*

¹⁸ As part of the Proposed Rule Changes, the Clearing Agencies filed certain materials as Exhibit 3: Excerpts from *DTCC Risk Tolerance Procedures: Intercompany Agreement Review and Storage Procedure*; and Excerpts from *DTCC Third Party Risk Policy and Procedures*. Pursuant to 17 CFR 240.24b-2, FICC requested confidential treatment of Exhibit 3.

¹⁹ *See* 17 CFR 240.17ad-25(j).

Councils to consider material developments in operations. The Clearing Agencies may also use other mechanisms, such as ad hoc group meetings of Clearing Agency participants and other relevant stakeholders, to assist the Boards of the Clearing Agencies in meeting their obligations under Rule 17Ad-25(j).

The Proposed Rule Changes state further that the Advisory Councils and the ad hoc mechanisms assist the Boards of the Clearing Agencies in their obligation to solicit, consider, and document their consideration of the views of participants and other relevant stakeholders of the Clearing Agencies regarding material developments in their respective risk management and operations on a recurring basis. Senior management of the Clearing Agencies would bring material developments in the Clearing Agencies' risk management and operations to the Advisory Councils (or ad hoc mechanisms) for their consideration. Senior management would document the views of the participating stakeholders on such developments. Senior management would then escalate the views on material developments in the Clearing Agencies risk management and operations to the Boards for their consideration. The Boards will consider and document their consideration of the views of Clearing Agency participants and other relevant stakeholders regarding material developments in the Clearing Agencies' risk management and operations that are escalated by senior management via the Advisory Councils or other appropriate means.²⁰

The Proposed Rule Changes also define "material developments" as including developments that would significantly affect the risk and/or operational profile of a

²⁰ See NSCC Notice of Filing, 89 FR at 71648; DTC Notice of Filing, 89 FR at 71599; and FICC Notice of Filing, 89 FR at 71595, all at note 3 *supra*.

Clearing Agency and/or would significantly affect the rights and obligations of relevant stakeholders. Providing information on such material developments enables stakeholders to identify and evaluate the risk, fees and other significant costs they incur by participating or otherwise interacting with a Clearing Agency. “Material developments” in the Clearing Agencies’ risk management and operations would cover areas such as financial risk management, margin methodologies, cyber and operational resiliency, default management, fee structures, the introduction of new cleared products and services, access models, and the design and functioning of the processes and technology systems that support the infrastructure of the Clearing Agencies and the way that participants and other relevant stakeholders connect to such systems.²¹

IV. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Act²² 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 carefully considering the Proposed Rule Changes, 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

²¹ As part of the Proposed Rule Changes, the Clearing Agencies filed certain materials as Exhibit 3: *DTC Asset Services Advisory Council Charter*; *FICC Advisory Council Charter*; *NSCC and DTC Clearance and Settlement Advisory Council Charter*; and *Risk Management Advisory Council Charter*. Pursuant to 17 CFR 240.24b-2, FICC requested confidential treatment of Exhibit 3.

²² 15 U.S.C. 78s(b)(2)(C).

are consistent with Section 17A(b)(3)(F)²³ of the Act and Rules 17ad-25(g), (h), (i), and (j),²⁴ each promulgated under the Act.

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

Section 17A(b)(3)(A) of the Act²⁵ requires, among other things, that the Clearing Agencies be so organized and have the capacity to be able to comply with the provisions of the Act and the rules and regulations thereunder. Section 17A(b)(3)(F) of the Act²⁶ requires, among other things, that the Clearing Agencies' rules must be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. Based on review of the record, and for the reasons discussed below,²⁷ the Proposed Rule Changes are consistent with the Clearing Agencies being so organized and having the capacity to comply with the Act and the rules and regulations thereunder, and the Proposed Rule Changes are designed to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. Accordingly, the Proposed Rule Changes are consistent with Section 17A(b)(3)(A) and (F) of the Act.

²³ 15 U.S.C. 78q-1(b)(3)(F).

²⁴ 17 CFR 240.17ad-22(e)(18)(iv)(C).

²⁵ 15 U.S.C. 78q-1(b)(3)(A).

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

²⁷ See Sections IV.B, C, and D *infra*.

B. Consistency with Rule 17Ad-25(g) and (h) Under the Act

Rule 17Ad-25(g) requires each registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and document, and mitigate or eliminate existing or potential conflicts of interest in the decision-making process of the directors or senior managers of the registered clearing agency. Also, Rule 17Ad-25(h) requires each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to require a director to document and inform the registered clearing agency promptly of the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director.

As described above, the Proposed Rule Changes outline the written policies and procedures that provide that the Clearing agencies identify, document, and mitigate or eliminate existing or potential conflicts of interest in the decision-making process involving directors or senior managers. The Proposed Rule Changes require directors to document and inform the Corporate Secretary promptly of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director. This is then escalated to the General Counsel's office who shall notify the Non-Executive Chairman if it is determined that a conflict exists. These conflicts may be addressed in several pre-established ways. Based on the foregoing, the proposed changes are consistent with the requirements of Rules 17ad-25(g) and (h).

C. Consistency with Rule 17Ad-25(i) Under the Act

Rule 17Ad-25(i) requires each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to require

senior management to: (1) evaluate and document the risks related to an agreement with a service provider for core services, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with the clearing agency's risk management framework; (2) submit to the board for review and approval any agreement that would establish a relationship with a service provider for core services; (3) be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for core services and require the board of directors to be responsible for reviewing and approving such policies and procedures; and (4) perform ongoing monitoring of the relationship, and report to the board of directors for its evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring; or if the risks or issues cannot be remedied, require senior management to assess and document weaknesses or deficiencies in the relationship with the service provider for submission to the board of directors.²⁸ As described above in Section III.C, the Proposed Rule Changes require senior management to evaluate and document risks related to agreements with services providers for core services, perform ongoing monitoring of the relationship, and report to the Boards for their evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring, consistent with Rule 17Ad-25(i)(1) and (4). The Proposed Rule Changes also state that the Boards would review and approve the procedures regarding, and any agreements that establish a relationship with, service providers for core services,

²⁸ 17 CFR 240.17ad-25(i).

consistent with Rule 17Ad-25(i)(2) and (3). The Proposed Rule Changes further state that if the risk or material issues identified cannot be remedied, senior management is required to assess and document weaknesses or deficiencies in the relationship with the service provider for core services for submission to the Board for evaluation, consistent with Rule 17Ad-25(i)(4). Based on the foregoing, the proposed changes are consistent with the requirements of Rule 17Ad-25(i).

D. Consistency with Rule 17Ad-25(j) Under the Act

Rule 17Ad-25(j) requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to require the board of directors to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders of the registered clearing agency regarding material developments in its risk management and operations on a recurring basis. The Proposed Rule Changes require a formal and regular process for solicitation, consideration, and documenting the consideration of participants and other relevant stakeholders. Based on the foregoing, the proposed changes are consistent with the requirements of Rules 17ad-25(j).

Accordingly, the Commission finds these proposed changes consistent with the requirements of Rule 17Ad-25.²⁹

V. 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

²⁹ 17 CFR 240.17ad-25.

requirements of and in particular, Section 17A(b)(3)(A) and (F) of the Act³⁰ and Rule 17Ad-25 thereunder.³¹

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act³² that proposed rule changes SR-NSCC-2024-006, SR-DTC-2024-009, and SR-FICC-2024-010 be, and hereby are, APPROVED.³³

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Sherry R. Haywood,

Assistant Secretary.

³⁰ 15 U.S.C. 78q-1(b)(3)(A).

³¹ 17 CFR 240.17ad-25.

³² 15 U.S.C. 78s(b)(2).

³³ In approving the Proposed Rule Changes, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³⁴ 17 CFR 200.30-3(a)(12).