

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-102280; File Nos. SR-DTC-2024-011; SR-FICC-2024-011; SR-NSCC-2024-010)

January 24, 2025

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

I. INTRODUCTION

On December 3, 2024, The Depository Trust Company (“DTC”), Fixed Income Clearing Corporation (“FICC”), and National Securities Clearing Corporation (“NSCC,” 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-DTC-2024-011, SR-FICC-2024-011, and SR-NSCC-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 would amend the Clearing Agency Investment Policy (“Investment Policy,” or “Policy”) of the Clearing Agencies to conform the Policy to the changes made to the FICC Government Securities Division Rulebook (“GSD Rules”) by SR-FICC-2024-007.³ The Proposed Rule Changes were published for comment in the *Federal Register* on December 17, 2024.⁴ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 101695 (Nov. 21, 2024), 89 FR 93763 (Nov. 27, 2024) (SR-FICC-2024-007) (“Account Segregation Filing”). The changes proposed in the Account Segregation Filing are expected to be implemented by no later than March 31, 2025. Terms not defined herein are defined in the GSD Rules, *available at* www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.

⁴ See Securities Exchange Act Release No. 101883 (Dec. 11, 2024), 89 FR 102195 (Dec. 17, 2024) (File No. SR-DTC-2024-011) (“DTC Notice of Filing”); Securities Exchange Act Release No. 101882 (Dec. 11, 2024), 89 FR 102234 (Dec. 17, 2024) (File No. SR-FICC2024-011) (“FICC Notice of Filing”); Securities

Commission has received no comments on the Proposed Rule Changes. For the reasons discussed below, the Commission is approving the Proposed Rule Changes.

II. BACKGROUND

Each Clearing Agency established the Clearing Agency 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 establishes 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 agreements, direct obligations of the U.S.

Exchange Act Release No. 101885 (Dec. 11, 2024), 89 FR 102211 (Dec. 17, 2024) (File No. SR-NSCC-2024-010) (“NSCC Notice of Filing”).

⁵ See Securities Exchange Act Release No. 79528 (December 12, 2016), 81 FR 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, MBSD 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); MBSD Rules, Rule 4 (Clearing Fund and Loss Allocation).

⁷ See 2016 Framework Order, 81 FR at 91233.

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

government, money market mutual funds, high grade corporate debt, hedge transactions, and further specifies which particular allowable investment is permitted for different portions of the Clearing Agencies' resources.⁹

On December 13, 2023, the Commission adopted amendments to the standards applicable to covered clearing agencies that clear transactions in U.S. Treasury securities ("Treasury CCAs"), such as FICC.¹⁰ These amendments require Treasury CCAs to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, among other things, calculate, collect, and hold margin for direct participants' proprietary positions separately and independently from margin calculated, collected, and held for indirect participants that rely on the services provided by the direct participant to access the Treasury CCA's payment, clearing, or settlement facilities.¹¹ The Commission also amended its broker-dealer customer protection rule ("Rule 15c3-3")¹² and the customer and proprietary accounts of broker-dealer ("PAB" reserve formulas thereunder ("Rule 15c3-3a"))¹³ to permit margin required and on deposit with Treasury CCAs to be included under certain conditions as a debit in the reserve formulas.¹⁴

⁹ See Securities Exchange Act Release Nos. 91291 (March 10, 2021), 86 FR 14500, 14501 (March 16, 2021) (SR-DTC-2021-002); Securities Exchange Act Release Nos. 91292 (March 10, 2021), 86 FR 14503, 14504 (March 16, 2021) (SR-FICC-2021-001); and Securities Exchange Act Release Nos. 91293 (March 10, 2021), 86 FR 14506, 14507 (March 16, 2021) (SR-NSCC-2021-003).

¹⁰ See Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (S7-23-22) ("Adopting Release," and the rules adopted therein as "Treasury Clearing Rules"). See also 17 CFR 240.15c3-3a.

¹¹ 17 CFR 240.17ad-22(e)(6)(i).

¹² 17 CFR 240.15c3-3.

¹³ 17 CFR 240.15c3-3a.

¹⁴ See *supra* note 10.

On November 21, 2024, the Commission issued an order approving a proposed rule change filed by FICC to modify the GSD Rules to calculate, collect, and hold margin for transactions that a direct GSD participant enters into for its own benefit (“proprietary transactions”) separately from margin a direct participant submits to FICC on behalf of indirect participants and to address conditions of Note H to Rule 15c3-3a under the Exchange Act.¹⁵ Such changes are expected to be implemented by FICC in the GSD Rules by no later than March 31, 2025.

The proposed changes to the Investment Policy would conform the Policy to the changes made to the GSD Rules pursuant to the Account Segregation Filing.

III. DESCRIPTION OF THE PROPOSED RULE CHANGE

The Clearing Agencies propose to modify the Investment Policy to (i) conform the Policy to the changes made to GSD Rules to calculate, collect, and hold margin for proprietary transactions of GSD Netting Members separately from transactions submitted on behalf of individual participants; (ii) implement changes to comply with SEC rules (specifically Rule 15c3-3 and 15c3-3a) regarding legal segregation of designated funds and restricting how they are held and invested; and (iii) update terms and make conforming changes.

A. Separating and Holding Indirect Participant Margin

The Clearing Agencies propose to modify the Investment Policy to conform the Policy to the changes made to GSD Rules to calculate, collect, and hold margin for proprietary transactions of GSD Netting Members separately from transactions submitted on behalf of individual participants. First, the Clearing Agencies propose to add a definition in Section 2 (Glossary of Terms) of the Investment Policy for the term Indirect Participants Clearing Fund

¹⁵ See *supra* note 3.

Deposits which shall mean “the total amount deposited in the GSD Clearing Fund to support activity in Agency Clearing Member Omnibus Accounts and Sponsoring Member Omnibus Accounts, other than Segregated Indirect Participants Accounts, as such terms are defined in the FICC Government Securities Division (‘GSD’) Rulebook (‘GSD Rules’).”¹⁶

Second, the Clearing Agencies propose to amend Section 3.2 (Guiding Principles) to specify that Indirect Participants Clearing Fund Deposits will be held by separately and independently on FICC’s books and records from all other deposits to the GSD Clearing Fund.

Third, the Clearing Agencies propose to amend Section 5 (Investable Funds) to specify that Indirect Participants Clearing Fund Deposits are included in the GSD Clearing Fund.

B. Legally Segregating and Limiting Investments of Segregated Customer Margin

The Clearing Agencies propose to modify the Investment Policy to implement changes to comply with SEC rules (specifically Rule 15c3-3 and 15c3-3a) regarding legal segregation of designated funds and restricting how they are held and invested. First, the Clearing Agencies propose to amend Section 2 (Glossary of Terms) to include a definition of the term Segregated Customer Margin which shall have the meaning given such term in the GSD Rules.

Second, the Clearing Agencies propose to amend Section 3.2 (Separation / Segregation of Funds) to include a statement that that Segregated Customer Margin will be segregated and held separately and independently from any other funds as described in the GSD Rules, specifically, Section 1a of GSD Rule 4. The Clearing Agencies state that the proposed changes to this section

¹⁶ See DTC Notice of Filing, *supra* note 4, at 102212; FICC Notice of Filing, *supra* note 4, at 102235; and NSCC Notice of Filing, *supra* note 4, at 102197.

address how FICC would comply with the conditions set forth in Rule 15c3-3 and Rule 15c3-3a regarding segregating and holding Segregated Customer Margin.¹⁷

Third, the Clearing Agencies propose to amend Section 5 (Investable Funds) to include Segregated Customer Margin as a source of investable funds as described in the GSD Rules, specifically, Section 1a of GSD Rule 4. The Clearing Agencies also propose to add a description of the recipient of investment income for Segregated Customer Margin which shall be GSD Netting Members for the benefit of the respective Indirect Participants.¹⁸ Additionally, the Clearing Agencies would clarify in the description of Participants Fund and Clearing Funds that Segregated Customer Margin is not treated as general FICC Clearing Fund.

Fourth, the Clearing Agencies propose to amend Section 6.1 (Allowable Investments) by including Segregated Customer Margin as a separate category of Allowable Investments and specifying these funds may only be invested in bank deposits, including the Federal Reserve Bank of New York.

Fifth, the Clearing Agencies propose to amend Section 6.2 (Investment Limits) to clarify that Segregated Customer Margin shall only be held in an account of FICC at a bank within the meaning of the Act that is insured by the Federal Deposit Insurance Corporation (“FDIC”), or at the Federal Reserve Bank of New York, as described in GSD Rule 4.¹⁹ Additionally, the

¹⁷ See DTC Notice of Filing, *supra* note 4, at 102213; FICC Notice of Filing, *supra* note 4, at 102236; NSCC Notice of Filing, *supra* note 4, at 102197.

¹⁸ GSD Rules also state that any interest earned on Segregated Customer Margin consisting of cash must be paid to the Netting Member on behalf of, and as agent for, its Segregated Indirect Participant. See Securities Exchange Act Release No. 101454 (Oct. 28, 2024), 89 FR 87441, 87443 (Nov. 1, 2024) (File No. SR-FICC-2024-007).

¹⁹ In addition to FICC requirements to hold Segregated Customer Margin in accounts at a bank within the meaning of the Act that is insured by the FDIC, GSD Rules require those accounts to be held at a bank that is a qualified custodian under the Investment Company Act of 1940 Act. *See id.*

Clearing Agencies propose to include language that higher investments limits may apply to investments of Segregated Customer Margin.

C. Update Terms and Conforming Changes

The Clearing Agencies propose to update terms in the Investment Policy and make conforming changes. The Clearing Agencies would replace references to the “Management Committee” with the term “senior most management committee,” which the Clearing Agencies state would more accurately describe the internal governing body without referring to its formal name.²⁰ The Clearing Agencies state the change to replace the formal name of the internal governing committee will ensure this body is accurately described in the Investment Policy in the event of any future changes to its formal name.²¹ The Clearing Agencies would also include a new defined term for “senior most management committee” in Section 2 to make clear it references the highest-level committee of DTCC.

Additionally, the Clearing Agencies would make several conforming changes to Section 4.3 (regarding authorization to establish new investment relationships), Section 6.2.3 (regarding authorization of investment transactions in U.S. Treasury securities), Section 6.2.5 (regarding authorization of investment transactions in high-grade corporate debt) and Section 7.2 (regarding authorization to exceed investment limits).

²⁰ See DTC Notice of Filing, *supra* note 4, at 102213; FICC Notice of Filing, *supra* note 4, at 102236; NSCC Notice of Filing, *supra* note 4, at 102197.

²¹ See *id.* For example, the Notices of Filing state that the Management Committee has recently changed its name to the Executive Committee.

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 are consistent with Section 17A(b)(3)(F) of the Act.²³

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

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency, such as the Clearing Agencies, be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.²⁴

As described above, the Clearing Agencies propose to amend the Investment Policy to support changes made to GSD Rules pursuant to the Account Segregation Filing. The proposed changes to the Investment Policy in Section 3.2 to state that Segregated Customer Margin shall be segregated and held separately and independently from any other funds in compliance with applicable conditions set out in Rule 15c3-3 and Rule 15c3-3a should enhance the Clearing Agencies' ability to meet their settlement obligations in the event of a Netting Member or indirect participant default. By doing so, the Proposed Rule Changes should better ensure that, in

²² 15 U.S.C. 78s(b)(2)(C).

²³ 15 U.S.C. 78q-1(b)(3)(F).

²⁴ 15 U.S.C. 78q-1(b)(3)(F).

the event of a default, the Clearing Agencies' operation of its critical clearance and settlement services would not be disrupted because of insufficient financial resources and, therefore, that the Clearing Agencies would be able to continue providing prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F).²⁵

In addition, the investment guidelines and governance procedures set forth in the Investment Policy are designed to safeguard the securities and funds that are in the custody or control of the Clearing Agencies on behalf of thier members. Specifically, the Proposed Rule Changes amend Section 6.1 of the Investment Policy to specify Segregated Customer Margin as an Allowable Investment and those funds shall only be held in an account of FICC at a bank that is insured by the FDIC, or at the Federal Reserve Bank of New York consistent with GSD Rules. In addition, the Proposed Rule 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, the Proposed Rule Changes would implement changes to the Investment Policy that are consistent with changes made to the GSD Rules pursuant the Account Segregation Filing, and also should safeguard the securities and funds in custody or control of the Clearing Agencies on behalf of its members, consistent with Section 17A(b)(3)(F).²⁶

For these reasons, the Proposed Rule Changes are designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of

²⁵ 15 U.S.C. 78q-1(b)(3)(F).

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

securities and funds which are in the custody or control of the clearing agency or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.²⁷

IV. 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 Act²⁸ and the rules and regulations promulgated thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act²⁹ that proposed rule changes SR-DTC-2024-011, SR-FICC-2024-011, and SR-NSCC-2024-010, be, and hereby are, APPROVED.³⁰

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Sherry R. Haywood,

Assistant Secretary.

²⁷ 15 U.S.C. 78q-1(b)(3)(F).

²⁸ 15 U.S.C. 78q-1.

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ In approving the Proposed Rule Changes, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³¹ 17 CFR 200.30-3(a)(12).