

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 email to rule-comments@sec.gov. Please include File Number SR-MSRB-2016-12 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-MSRB-2016-12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<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 Web site 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 the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2016-12 and should be submitted on or before October 4, 2016.

For the Commission, pursuant to delegated authority.¹⁴¹

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78778; File Nos. SR-DTC-2016-007; SR-FICC-2016-005; SR-NSCC-2016-003]

Self-Regulatory Organizations; The Depository Trust Company; Fixed Income Clearing Corporation; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Changes Relating to Clearing Agency Investment Policy

September 7, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4,² notice is hereby given that on August 25, 2016, The Depository Trust Company ("DTC"), Fixed Income Clearing Corporation ("FICC"), and National Securities Clearing Corporation ("NSCC", and together with DTC and FICC, the "Clearing Agencies") 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 Agencies. 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 would adopt the Clearing Agency Investment Policy, which governs the investment of funds of the Clearing Agencies, as described below. This proposed rule change does not require any changes to the Rules & Procedures of NSCC ("NSCC Rules"), the DTC Rules, By-laws and Organizational Certificate ("DTC Rules"), the Clearing Rules of the Mortgage-Backed Securities Division of FICC ("MBS Rules") or the Rulebook of the Government Securities Division of FICC ("GSD Rules").³

¹⁴¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms not defined herein are defined in the NSCC Rules, DTC Rules, MBS Rules or GSD Rules, as applicable, available at <http://dtcc.com/legal/rules-and-procedures>.

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 Agencies 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 Agencies have 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 have adopted the Clearing Agency Investment Policy to govern the management, custody, and investment of cash deposited to the respective NSCC and FICC Clearing Funds, and the DTC Participants Fund,⁴ 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, as described below. Investment of these funds was previously governed by the investment policy of the parent company of the Clearing Agencies, The Depository Trust & Clearing Corporation ("DTCC"). The Clearing Agency Investment Policy would include a glossary of key terms, the roles and responsibilities of DTCC staff in administering the Clearing Agency 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, as described below.

Governance and Responsibilities

The Clearing Agency Investment Policy would be co-owned by DTCC's Treasury group ("Treasury")⁵ and the Counterparty Credit Risk team ("CCR") within DTCC's Financial Risk

⁴ The NSCC and FICC Clearing Funds, and the DTC Participants Fund are described further in the rules of each of the Clearing Agencies. See Rule 4 (Clearing Fund) of the NSCC Rules, Rule 4 (Participants Fund and Participants Investment) of the DTC Rules, Rule 4 (Clearing Fund and Loss Allocation) of the GSD Rules and Rule 4 (Clearing Fund and Loss Allocation) of the MBS Rules. *Supra*, note 3.

⁵ Treasury is a part of the DTCC Finance Department and is responsible for the safeguarding, investment and disbursement of funds on behalf of the Clearing Agencies and in accordance with the principles outlined in the Clearing Agency Investment Policy.

Management group.⁶ Additionally, the Clearing Agency Investment Policy would be reviewed annually and material changes would be required to be approved by the Board of Directors of each of NSCC, DTC and FICC (the “Boards”), or such other committee to which such authority may be delegated by the Boards from time to time. Future changes to the Clearing Agency Investment Policy would be subject to a subsequent rule filing and approval by the Commission.

Treasury would be responsible for identifying potential counterparties to investment transactions, establishing and managing investment relationships with approved investment counterparties, and making and monitoring all investment transactions with respect to the Clearing Agencies. Additionally, Treasury would be responsible for managing, monitoring and internal reporting of investment capacity utilization relative to established aggregate investment limits.⁷

CCR would be responsible for conducting a credit review of any potential counterparty, updating those reviews on a quarterly basis and establishing the investment limit for each counterparty approved by CCR. In conducting a credit review, CCR would evaluate the creditworthiness of counterparties based on a number of factors, including the credit ratings provided by external credit rating agencies. Counterparties generally would be required to meet a minimum external credit rating set forth in the Clearing Agency Investment Policy; however, CCR would be permitted to grant an exception to the minimum external credit rating requirement for a particular counterparty where CCR concludes that approving exposures to that counterparty would serve a valid business or investment purposes [sic] of the Clearing Agencies and the risk of loss or default to the Clearing Agencies is assessed as minimal. CCR could grant an exception on the foregoing basis based on an assessment of the counterparty’s capitalization levels, liquidity resources, earnings trends and any other relevant information, and any such exception would be approved by a

Managing Director in DTCC’s Financial Risk Management group in accordance with the Clearing Fund [sic] Investment Policy.

Clearing Agency Investment Policy Overview

The Clearing Agency Investment Policy would identify permitted investments and the parameters of, and limitations on, each type of investment. In general, assets would be required to be held by regulated and creditworthy financial institution counterparties and invested in specified types of financial instruments. Permitted financial investments may include, for example, deposits with banks, including the Federal Reserve Bank of New York (“FRBNY”), collateralized reverse-repurchase agreements, direct obligations of the U.S. government, money-market mutual funds and high-grade corporate debt.⁸ Additionally, the Clearing Agencies would, pursuant to the Clearing Agency Investment Policy, be permitted to use general corporate funds, and only such funds, to enter into hedge transactions to manage certain corporate exposures, such as interest rate or foreign currency risk; hedge transactions would not be permitted to be engaged in for speculative purposes.

The Clearing Agency Investment Policy would set forth guiding principles for the investment of funds, which include adherence to a prudent and conservative investment philosophy that places the highest priority on maximizing liquidity and avoiding risk. The guiding principles would also mandate the segregation and separation of deposits to the respective NSCC and FICC Clearing Funds and the DTC Participants Fund, so that such amounts are not commingled with each other or with other funds held by the Clearing Agencies. The guiding principles would also address the process for evaluating the credit ratings of counterparties and setting investment limits, which would be evaluated, reviewed and approved quarterly by CCR. Finally, the guiding principles would make clear that risk of investment loss is addressed by the rules of each of the Clearing Agencies.

Funds invested pursuant to the Clearing Agency Investment Policy would include (i) cash deposits to the respective NSCC and FICC Clearing Funds and the DTC Participants Fund, (ii) general corporate funds of each of the Clearing Agencies, (iii) NSCC’s prefunded default liquidity funds raised

from the private placement of unsecured debt,⁹ (iv) amounts deposited with NSCC by its participants to meet Rule 15c3–3, promulgated under the Act as part of its fully-paid-for service,¹⁰ (v) corporate action payments or principal and interest payments on Securities credited to the Accounts of DTC Participants that are received by DTC too late in the day or missing information needed for same-day allocation,¹¹ (vi) funds collected from DTC Participants through net funds settlement and held by DTC to cover 130% of the market value of “short positions,”¹² and (vii) cash debited from Netting Members of FICC’s Government Securities Division to satisfy such Members’ mark-to-market deficits on forward settling transactions.¹³

Investments in collateralized reverse repurchase agreements would be secured by debt obligations of the U.S. Government or Agencies guaranteed by the U.S. Government, or by mortgage pass-through obligations issued by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. Collateral posted by a counterparty to a reverse repurchase agreement (whether securities or a combination of securities and cash) would be required to have a market value equal to 102% or greater of the cash invested. Investments would also be permitted in money market mutual funds that have a credit rating from one or more recognized rating agencies. All permitted investments would be short term and readily accessible for liquidity, should the need arise, minimizing market risk.

Finally, the Clearing Agency Investment Policy would identify those individuals who may authorize certain investments, the establishment of investment relationships with approved counterparties, the execution of investment transactions with certain maturities, and requests to exceed investment limits for any counterparty or any investment type. Requests to exceed counterparty limits would be capped at a certain percent of the

⁹ See Securities Exchange Act Release No. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015) (File No. SR–NSCC–2015–802).

¹⁰ 17 CFR 240.15c3–3; see *supra*, note 3.

¹¹ See *supra*, note 3.

¹² In this context, “short positions” refer to Securities that have been deposited by, and credited to the Account of, a DTC Participant, pending re-registration into the name of Cede & Co., the DTC nominee, which are nevertheless permitted to be delivered to another DTC Participant; this 130% charge is held by DTC until the Securities are re-registered. See *supra*, note 3.

¹³ See *supra*, note 3.

⁶ Among other responsibilities, DTCC’s Financial Risk Management group (formerly known as DTCC’s “Enterprise Risk Management” group) is generally responsible for the systems and processes designed to identify and manage credit, market and liquidity risks to the Clearing Agencies.

⁷ All investments are subject to limits set by type of allowable investment and by counterparty. Investment limits are set at an aggregate DTCC-wide level and would apply to investments made by any of DTCC and each of its subsidiaries, including each of the Clearing Agencies.

⁸ Only general corporate funds of a Clearing Agency would be permitted to be invested in high-grade corporate debt.

respective limits, as set forth in the Clearing Agency Investment Policy.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, among other things, that the Clearing Agencies' respective rules be designed to promote the prompt and accurate clearance and settlement of securities transactions, 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, and, in general, to protect investors and the public interest.¹⁴

The investment guidelines and governance procedures set forth in the Clearing Agency Investment Policy are designed to safeguard assets and to facilitate access to these assets, as needed, without delay, because certain assets that would be invested pursuant to the Clearing Agency Investment Policy constitute key liquidity resources of the Clearing Agencies. As such, these assets should be readily available to facilitate end-of-day settlement, including in the event of a member default, and to cover potential losses due to such an event. Therefore, the protections that would be afforded these assets under the Clearing Agency Investment Policy, which include, for example, following a prudent and conservative investment philosophy that places highest priority on maximizing liquidity and risk avoidance, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds related thereto, all in furtherance of protecting investors and the public interest, in compliance with Section 17A(b)(3)(F) of the Act.¹⁵

Rule 17Ad-22(d)(3), promulgated under the Act, requires the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or of delay in its access to them and to invest assets in instruments with minimal credit, market and liquidity risks.¹⁶ As stated above, the Clearing Agency Investment Policy follows a prudent and conservative investment philosophy, placing the highest priority on maximizing liquidity and avoiding risk of loss, by requiring the segregation of funds of each Clearing Agency and of types of funds of each Clearing Agency, using external credit ratings in the evaluation of counterparties, and establishing

counterparty investment limits by counterparty as well as investment type. Further, by requiring that each Clearing Agency invest its assets in instruments with minimal credit, market and liquidity risks, the Clearing Agency Investment Policy complies with the requirements of Rule 17Ad-22(d)(3), promulgated under the Act.¹⁷

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

Each of the Clearing Agency [sic] believes that the Clearing Agency Investment Policy would not have any impact, or impose any burden, on competition because the proposed rule change would (1) apply equally to the Clearing Fund or Participants Fund deposits, as applicable, of each member of the respective Clearing Agencies and (2) establish a uniform policy at the Clearing Agencies.

(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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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:

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- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-

DTC-2016-007, SR-FICC-2016-005, or SR-NSCC-2016-003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Brent J. Fields,
Secretary.

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¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ *Id.*

¹⁶ 17 CFR 240.17Ad-22(d)(3).

¹⁷ *Id.*

¹⁸ 17 CFR 200.30-3(a)(12).