

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-100400; File Nos. SR-DTC-2024-003; SR-FICC-2024-006; SR-NSCC-2024-003)

June 21, 2024

Self-Regulatory Organizations; The Depository Trust Company; Fixed Income Clearing Corporation; National Securities Clearing Corporation; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend the Clearing Agency Risk Management Framework

**I. INTRODUCTION**

On March 11, 2024, 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-2024-003, SR-FICC-2024-006, and SR-NSCC-2024-003, respectively (each, a “Proposed Rule Change, and collectively, the “Proposed Rule Changes”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The Proposed Rule Changes were published for comment in the Federal Register on March 26, 2024.<sup>3</sup> The Commission has received comments on the changes proposed.<sup>4</sup>

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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> See Securities Exchange Act Release No. 99802 (Mar. 20, 2024), 89 FR 21118 (Mar. 26, 2024) (File No. SR-DTC-2024-003) (“DTC Notice of Filing”); Securities Exchange Act Release No. 99805 (Mar. 20, 2024), 89 FR 21068 (Mar. 26, 2024) (File No. SR-FICC-2024-006) (“FICC Notice of Filing”); Securities Exchange Act Release No. 99803 (Mar. 20, 2024), 89 FR 21091 (Mar. 26, 2024) (File No. SR-NSCC-2024-003) (“NSCC Notice of Filing”) (collectively, “Notices of Filing”).

<sup>4</sup> Specifically, the Commission received comments on the FICC Notice of Filing, and the comments are available at <https://www.sec.gov/comments/sr-ficc-2024-006/srficc2024006.htm>.

On May 14, 2024, pursuant to Section 19(b)(2) of the Exchange Act,<sup>5</sup> the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.<sup>6</sup> The Commission is instituting proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,<sup>7</sup> to determine whether to approve or disapprove the Proposed Rule Change.

## **II. SUMMARY OF THE PROPOSED RULE CHANGE**

### **A. Background**

The Clearing Agency Risk Management Framework (“Framework”) provides an outline for, among other things, how each of the Clearing Agencies comprehensively manages the risks, including the legal, credit, liquidity, operational, general business, investment, custody, and other risks, that arise in or are borne by it.

On December 13, 2023, the Commission adopted rules under the Act to amend the standards applicable to covered clearing agencies providing central counterparty services for transactions in U.S. Treasury securities to require policies and procedures be reasonably designed to ensure that the covered clearing agency has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants.<sup>8</sup> The adopted rules also require that these policies and

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<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Notices of Filing, supra note 3.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (S7-23-22) (Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule with Respect to U.S. Treasury Securities).

procedures be reviewed annually by the board of directors of such covered clearing agencies for U.S. Treasury securities.<sup>9</sup> Currently, FICC is the only Clearing Agency providing clearance and settlement services to the U.S. Treasury securities market.

#### B. Proposed Rule Changes

The Proposed Rule Changes would amend the Framework to: (i) describe generally Clearing Agency participant and industry stakeholder outreach in the development and evaluation of new programs or risk management practices; (ii) provide for the annual review of FICC's Government Securities Division ("GSD") access models by FICC's Board of Directors; and (iii) make other conforming and clean up changes to the text of the Framework. Other than those described in (iii), these changes would be set forth in a new section 3.4 "Solicitation of Participant and Stakeholder Views," consisting of two subsections described below.

First, new subsection 3.4.1 (General Solicitation of Views) would codify an existing practice, that is, that the Clearing Agencies routinely solicit their participants' and other industry stakeholders' views when developing and evaluating products, services, or risk management practices so they may best meet the industry's needs.<sup>10</sup> This new subsection would describe several ways that the Clearing Agencies may seek the views of participants and stakeholders, including, but not limited to, targeted outreach to firms expected to be impacted by a proposal, widely distributed surveys, ad hoc forums, and standing and temporary advisory councils assembled to consider issues relevant to a proposal. The subsection would also identify the stakeholders that may participate in such advisory councils, including for example,

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<sup>9</sup> 17 CFR 240.17Ad-22(e)(18)(iv)(C).

<sup>10</sup> See DTC Notice of Filing, supra note 3, 89 FR at 21119; FICC Notice of Filing, supra note 3, 89 FR at 21069; NSCC Notice of Filing, supra note 3, 89 FR at 21092.

representatives from transfer agents, liquidity providers, market infrastructures, institutional and retail investors, customers of the Clearing Agencies' participants, securities issuers, and securities holders. The Clearing Agencies state that the proposed changes in sub-section 3.4.1 do not create any particular obligation for the Clearing Agencies to conduct such outreach in any circumstance.<sup>11</sup>

Second, the Clearing Agencies proposed new sub-section 3.4.2 (Required Solicitation of Views – Annual Review of GSD Access Models) in connection with the recently adopted requirement, noted above, that the Board of Directors of all covered clearing agencies serving the U.S. Treasury securities market conduct an annual review of their policies and procedures to ensure that they have appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants. To address the new requirement, the new subsection would provide that FICC would establish an advisory council which would assist in the annual review of GSD's access models. The advisory council will be comprised of participants, their customers, and other industry stakeholders. This annual advisory council review of GSD's access models would precede an annual review of GSD's access models by the FICC Board, which would also be required by this new subsection.<sup>12</sup> The new subsection would require that the annual review include the following: (1) document any instance in which FICC treats transactions differently and confirm that any variation in treatment is both necessary and appropriate; (2) consider whether to enable GSD's Netting Members to submit eligible transactions for clearance and settlement that have been executed by two indirect participants of FICC/GSD ("done-away"); (3)

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<sup>11</sup> Id.

<sup>12</sup> 17 CFR 240.17Ad-22(e)(18)(iv)(C).

consider the volumes and proportion of the markets that are being centrally cleared through different access models; and (4) consider whether it is appropriate to develop and propose an additional category or categories of Netting Members to the GSD Rules to reflect the types of legal entities that applied to be a Netting Member over the prior 12 months and did not fit into one of the existing Netting Member categories.

i. Other Conforming and Clean Up Changes

Third, the Proposed Rule Changes would make other conforming, non-substantive changes to the release to reflect the inclusion of the new subsections described above and to remove the defined term “Management Committee” wherever referenced and replace it with “senior management committee” while maintaining the current makeup and responsibilities of the current Management Committee, as described in the Framework. The Clearing Agencies state that the Proposed Rule Changes would allow the Framework to continue to be accurate notwithstanding any future name changes to the committee.<sup>13</sup> Other minor grammatical and clean up changes would also be made to the Framework.

**III. PROCEEDINGS TO DETERMINE WHETHER TO APPROVE OR DISAPPROVE THE PROPOSED RULE CHANGE AND GROUNDS FOR DISPROVAL UNDER CONSIDERATION**

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the Proposed Rule Changes should be approved or disapproved.<sup>14</sup> Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Changes. Institution of proceedings does not indicate

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<sup>13</sup> See DTC Notice of Filing, supra note 3, 89 FR at 21120; FICC Notice of Filing, supra note 3, 89 FR at 21070; NSCC Notice of Filing, supra note 3, 89 FR at 21093.

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Changes, which would provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Changes.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,<sup>15</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Changes' consistency with Section 17A of the Exchange Act<sup>16</sup> and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Exchange Act,<sup>17</sup> which requires, among other things, that the rules of a clearing agency are 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, as well as to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and to protect investors and the public interest;
- Rule 17ad-22(e)(2) under the Exchange Act,<sup>18</sup> which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that: (i) are clear and transparent; (ii) clearly prioritize the safety and efficiency of the covered clearing agency;

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<sup>15</sup> Id.

<sup>16</sup> 15 U.S.C. 78q-1.

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>18</sup> 17 CFR 240.17ad-22(e)(2).

(iii) support the public interest requirements in Section 17A of the Exchange Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of owners and participants; (iv) establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities; (v) specify clear and direct lines of responsibility; and (vi) consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency;

- Rule 17ad-22(e)(3)(i) under the Exchange Act,<sup>19</sup> which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the board of directors annually;
- Rule 17ad-22(e)(18)(iv)(C) under the Exchange Act,<sup>20</sup> which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S.

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<sup>19</sup> 17 CFR 240.17ad-22(e)(3)(i).

<sup>20</sup> 17 CFR 240.17ad-22(e)(18)(iv)(C).

Treasury securities, including those of indirect participants, which policies the U.S.

Treasury securities covered clearing agency board of directors reviews annually; and,

- Rule 17ad-25(j) of the Exchange Act,<sup>21</sup> which requires each registered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed 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 governance and operations on a recurring basis.

#### **IV. PROCEDURE: REQUEST FOR WRITTEN COMMENTS**

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Changes. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Changes are consistent with Section 17A(b)(3)(F)<sup>22</sup> and Rules 17Ad-22(e)(2), 17ad-22(e)(3)(i), 17ad-22(e)(18)(iv)(C), and 17ad-25(j)<sup>23</sup> of the Exchange Act, or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4(g) under the Exchange Act,<sup>24</sup> any request for an opportunity to make an oral presentation.<sup>25</sup>

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<sup>21</sup> 17 CFR 240.17ad-25(j)

<sup>22</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>23</sup> 17 CFR 240.17ad-22(e)(2), (e)(3)(i), and (e)(18)(iv)(C), and 17 CFR 240.17ad-25(j).

<sup>24</sup> 17 CFR 240.19b-4(g).

<sup>25</sup> Section 19(b)(2) of the Exchange Act grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is



The Commission asks that commenters address the sufficiency of FICC's statements in support of the Proposed Rule Changes, which are set forth in the Notices of Filing<sup>26</sup> in addition to any other comments they may wish to submit about the Proposed Rule Changes.

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 numbers SR-DTC-2024-003; SR-FICC-2024-006; SR-FICC-2024-003 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to file numbers SR-DTC-2024-003; SR-FICC-2024-006; SR-FICC-2024-003. This file number should be included on the subject line if e-mail 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 website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Changes that are filed with the Commission, and all written communications relating to the Proposed Rule Changes between the Commission and any person, other than those that may be withheld from the public in

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appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>26</sup> See Notice of Filing, supra note 3.

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's website ([www.dtcc.com/legal/sec-rule-filings](http://www.dtcc.com/legal/sec-rule-filings)).

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to File Numbers SR-DTC-2024-003; SR-FICC-2024-006; SR-FICC-2024-003 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

**Vanessa A. Countryman,**

*Secretary.*

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<sup>27</sup> 17 CFR 200.30-3(a)(31).