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**Via Electronic Mail**

Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Process for Submissions for Review of Security-Based Swaps for  
Mandatory Clearing and Notice Filing Requirements for Clearing  
Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4  
Applicable to All Self-Regulatory Organizations -- File Number  
S7-44-10

Dear Ms. Murphy:

The Depository Trust & Clearing Corporation (“DTCC”) appreciates the opportunity to provide comments to the Securities and Exchange Commission (the “Commission”) on the proposed rules and other matters set forth in Exchange Act Rel. No. 34-63557 (the “Release”)<sup>1</sup> insofar as the Release relates to the advance notice requirement of Section 806(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The comments set forth in this letter reflect and amplify concerns previously discussed by DTCC with Commission staff. Capitalized terms used in this letter which are not defined herein have the meanings given to such terms in the Dodd-Frank Act.

Section 806(e) of the Dodd-Frank Act requires (i) a designated financial market utility to provide 60-days advance notice to its Supervisory Agency of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risk presented by the utility and (ii) each Supervisory Agency, in consultation with the Board of Governors, to prescribe regulations that define and describe the standards for determining when such advance notice is required to be provided. The addition of a new paragraph (n) to Rule 19b-4, and conforming changes to existing paragraph (i) and Form 19b-4 as set forth in the Release (the “Proposed Rules”), would implement the advance notice requirement of Section 806(e).

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<sup>1</sup> 75 Fed. Reg. 82490 (Dec. 30, 2010).

*Subsidiaries:*  
The Depository Trust Company  
National Securities Clearing Corporation  
Fixed Income Clearing Corporation  
DTCC Deriv/SERV LLC  
DTCC Solutions LLC  
EuroCCP

### **DTCC AND THE REGISTERED CLEARING AGENCIES IN THE DTCC GROUP**

DTCC is the parent company of a group of operating subsidiaries which provide clearance, settlement and information services for equity securities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments and over the counter derivatives. The operating subsidiaries in the DTCC group help to automate, centralize, standardize and streamline processes that are critical to the safety and soundness of the capital markets.

DTCC has three clearing agency subsidiaries that are registered under Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and are subject to regulation by the Commission:

- (a) The Depository Trust Company ("DTC") is a central securities depository that provides custody, asset servicing and book-entry settlement services for its participants. As a New York limited purpose trust company and state member bank of the Federal Reserve System, DTC is also regulated by the New York State Banking Department and the Board of Governors.
- (b) National Securities Clearing Corporation ("NSCC") is a clearinghouse and central counterparty for equity securities, corporate and municipal bonds and other securities traded in the capital markets. NSCC processes substantially all broker-to-broker trades in equity securities and corporate and municipal bonds in the United States.
- (c) Fixed Income Clearing Corporation ("FICC") processes the bulk of all trading in the US fixed-income marketplace. FICC operates two divisions: the Government Securities Division ("FICC-GSD") and the Mortgage-Backed Securities Division ("FICC-MBSD"). FICC-GSD provides clearing, risk management and central counterparty services in the fixed income and government securities markets. FICC-MBSD provides clearing and risk management services in the mortgage-backed securities market.

No clearing agencies or other financial market utilities have yet been designated as "systemically important" pursuant to Section 804 of the Dodd-Frank Act and, therefore, no such entities are currently subject to the advance notice requirement of Section 806(e). However, DTCC expects that DTC, NSCC and FICC will be designated and will, therefore, be subject to Section 806(e) and the rules and regulations of the Commission thereunder.<sup>2</sup> Accordingly, DTCC offers the following comments on the

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<sup>2</sup> We note that the Commission states in the Release that (i) "[f]or purposes of the PRA [Paperwork Reduction Act] analysis, the Commission estimates that the four registered securities clearing agencies that are currently clearing securities and the six estimated clearing agencies that may clear security-based swaps would be subject to the [advance notice requirement]" (see 75 Fed. Reg at 82508) and (ii) "the Commission preliminarily believes that approximately ten registered clearing agencies could be

Release and the Proposed Rules in anticipation of DTC, NSCC and FICC becoming subject to the advance notice requirement.

## DTCC COMMENTS ON THE RELEASE AND PROPOSED RULES

### Requirements for Filing Advance Notices

Section 806(e)(1)(A) of the Dodd-Frank Act requires that a designated financial market utility file an advance notice of changes to its rules, procedures, or operations that could *materially affect the nature or level of risk presented* by the utility. In subparagraph (2)(i) of proposed new paragraph (n) of Rule 19b-4, the phrase *materially affect the nature or level of risk presented*, when used to qualify determinations on a change to rules, procedures, or operations of a designated clearing agency, is defined to mean “matters as to which there is a reasonable possibility that the change could affect the performance of essential clearing and settlement functions or the overall nature or level of risk presented by the designated clearing agency.” Set forth in subparagraph (2)(ii) of proposed new paragraph (n) are certain non-exclusive examples of changes that “could materially affect the nature or level [of] risks presented by a designated clearing agency”. Set forth in subparagraph (2)(iii) of new paragraph (n) are certain non-exclusive examples of changes that “may not materially affect the nature or level [of] risks presented by a designated clearing agency.”

DTCC appreciates the effort made by the Commission in proposed new paragraph (n) of Rule 19b-4 to define the phrase *materially affect the nature or level of risks presented* in Section 806(e)(1)(A) of the Dodd-Frank Act and to provide non-exclusive examples of changes that would and would not be deemed to fall within that definition and therefore require the filing of an advance notice. However, DTCC has serious concerns with respect to the potential scope and burden of the advance notice requirement.

DTCC believes that the advance notice requirement must be interpreted and administered in a reasonable and responsible way to identify matters of true importance that require attention by the Commission and comment by the public. It does not serve the purposes of the Dodd-Frank Act for matters of little practical significance to be caught up in the process. DTCC also believes that an overly expansive application of the advance notice requirement could strain the limited resources of designated clearing agencies to prepare, and Commission staff to review, advance notices.<sup>3</sup> In addition, there is a real danger of regulatory gridlock with respect to advance notices because the Dodd-Frank Act requires every matter that is the subject of an advance notice to be the

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designated by the Council as systemically important (and for which the Commission will be the Supervisory Agency), which includes the four existing securities clearing agencies and the six estimated clearing agencies that may clear security-based swaps” (see 75 Fed. Reg. at 82519).

<sup>3</sup> See Sections 806(e)(1)(D)-(I) of the Dodd-Frank Act. See also 75 Fed. Reg. at 82503.

subject of a separate consultation between the Commission and the Board of Governors.<sup>4</sup>

DTCC believes that, with respect to the interpretation and administration of the advance notice requirement, the Commission should take account of the following:

*Prior Experience under Exchange Act Section 19(b) and Rule 19b-4*

The Commission states in the Release that “there are similarities between the requirement to file proposed rule changes under Exchange Act Section 19(b) and the new requirements under the Dodd-Frank Act to file Security-Based Swap Submissions and Advance Notices”.<sup>5</sup>

DTCC would suggest that one of the similarities between the requirement to file proposed rule changes under Exchange Act Section 19(b) and the requirement to file advance notices under Section 806(e) of the Dodd-Frank Act is the need for the clearing agency to make a determination of materiality. Under Rule 19b-4, a proposed rule change includes a change in a “stated policy, practice or interpretation” of a self-regulatory organization. A “stated policy, practice or interpretation” is, in turn, defined in Rule 19b-4 to include “any material aspect of the operation of the facilities of the self-regulatory organization.”

We note that there are differences in the circumstances in which proposed rule changes must be filed under Exchange Act Section 19(b) and the circumstances in which advance notices are required to be filed under Section 806(e) of the Dodd-Frank Act. However, DTCC would expect that the experience which has informed the determination of materiality under Exchange Act Section 19(b) will also guide the practical application of the materiality requirement under Section 806(e) of the Dodd Frank Act, so that designated clearing agencies may discharge their obligations under Section 806(e) in a coherent and agreed manner.

*Opportunity to Consult with Commission Staff*

The Commission states in the Release that, “as [the advance notice requirement] would be a new requirement, the Commission expects that designated clearing agencies may discuss, at least initially, proposed changes with the Commission staff prior to determining if advance notice under Section 806(e) is required to be filed with respect to a proposed change to the clearing agency’s rules, procedures or operations.”<sup>6</sup>

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<sup>4</sup> See Section 806(e)(4) of the Dodd-Frank Act.

<sup>5</sup> 75 Fed. Reg. at 82492.

<sup>6</sup> 75 Fed. Reg. at 82502.

DTCC agrees that, particularly during the initial implementation of this new requirement, designated clearing agencies may want to discuss operational changes with the Commission before making a determination as to whether such changes require the filing of an advance notice. DTCC believes that there should be open communication between designated clearing agencies and the Commission and appreciates that the Commission also sees the need for dialogue in this regard.

*Other Supervision of Designated Clearing Agencies*

DTCC would like to remind the Commission that advance notices will be only one of the ways in which the Commission may monitor the risks presented by a designated clearing agency. Through the regular supervisory process, DTCC will continue to share with the Commission a substantial amount of information covering all aspects of the operations of its clearing agency subsidiaries, including information that it may determine should not be the subject of an advance notice.

**Procedures for Processing Advance Notices**

DTCC understands the procedures for the standard processing of advance notices under Section 806(e) of the Dodd-Frank Act and the Proposed Rules as follows:

- (a) A designated clearing agency must submit an advance notice filing to the Commission electronically on Form 19b-4.<sup>7</sup> The designated clearing agency must also (i) contemporaneously provide the Board of Governors with three copies, in hard copy format, of all materials submitted to the Commission relating to the advance notice<sup>8</sup> and (ii) retain at its principal place of business a file, for public inspection and copying, of all advance notices made by the designated clearing agency and all written communications to and from the designated clearing agency concerning the advance notice.<sup>9</sup>
- (b) The 60-day review period will begin to run on the later of (i) the date that the Commission receives the notice of proposed change and (ii) the date that the Commission receives any further information requested for consideration of the notice.<sup>10</sup> However, the Commission may, during the 60-day review period, extend the review period for an additional 60 days for proposed

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<sup>7</sup> See Proposed Rule 19b-4(n)(1).

<sup>8</sup> See Proposed Rule 19b-4(n)(5). See also 75 Fed. Reg. at 82502 and 82526.

<sup>9</sup> See Proposed Rule 19b-4(i).

<sup>10</sup> See Sections 806(e)(1)(D)-(E),(G) of the Dodd-Frank Act.

changes that raise novel or complex issues if the Commission provides the designated clearing agency with prompt written notice of the extension.<sup>11</sup>

- (c) Upon the filing of the advance notice, the Commission must provide for the prompt publication thereof in the Federal Register.<sup>12</sup>
- (d) Within two business days after filing the advance notice, and any amendments thereto, with the Commission, the designated clearing agency must post the advance notice, and any amendments thereto, on its website.<sup>13</sup>
- (e) Interested persons will be given an opportunity to review and to submit written data, views and arguments concerning matters referred to in the advance notice.<sup>14</sup> The public comment period for advance notices is expected to be twenty-one days from publication in the Federal Register.<sup>15</sup> It is our understanding that the review period will continue to run during the public comment period.
- (f) The Commission will consider comments and other information received during the comment period in determining whether to object to an advance notice.<sup>16</sup> Before taking any action on, or completing its review of, a change proposed by a designated clearing agency, the Commission must consult with the Board of Governors.<sup>17</sup>
- (g) If the Commission has any objection to the proposed change, it must notify the designated clearing agency during the review period.<sup>18</sup> If the

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<sup>11</sup> See Section 806(e)(1)(H) of the Dodd-Frank Act.

<sup>12</sup> See Proposed Rule 19b-4(n)(1). See also 75 Fed. Reg. at 82502.

<sup>13</sup> See Proposed Rule 19b-4(n)(3). See also 75 Fed. Reg. at 82502. We note that Proposed Rule 19b-4(n) also contains (i) provisions relating to the ongoing maintenance of such post and (ii) separate requirements for the designated clearing agency to post a notice on its website within two business days of (a) the date that the change referred to in the advance notice has been permitted to take effect and (b) if different from the date in clause (a), the date that the proposed change becomes effective. See Proposed Rule 19b-4(n)(3)-(4). See also 75 Fed. Reg. at 82502.

<sup>14</sup> See 75 Fed. Reg. at 82502.

<sup>15</sup> See *Id.* at FN 92. This is the same comment period that is currently used for proposed rule change filings under Exchange Act Section 19(b). See *Id.*

<sup>16</sup> See 75 Fed. Reg. at 82502.

<sup>17</sup> See Section 806(e)(4) of the Dodd-Frank Act.

<sup>18</sup> See Section 806(e)(1)(E) of the Dodd-Frank Act. We note that under Section 806(e)(3) of the Dodd-Frank Act, the Commission is required to provide the Board of Governors concurrently with a complete copy of any notice, request or other information it issues, submits, or receives under Section 806(e) of the Dodd-Frank Act (which would include an objection notice).

Commission objects to a proposed change, then the designated clearing agency may not implement the change.<sup>19</sup>

- (h) If the Commission does not object to a proposed change, then the designated clearing agency may implement the change either (i) upon the expiration of the review period<sup>20</sup> or (ii) earlier, if the Commission notifies the designated clearing agency in writing that it does not object to the proposed change and authorizes the designated clearing agency to implement the change on an earlier date (subject to any conditions imposed by the Commission).<sup>21</sup> However, if the change is also subject to a proposed rule change filing under Exchange Act Section 19(b) and/or a security-based swap filing under Exchange Act Section 3C, the requirements of each applicable Section must be satisfied before the change may be implemented.<sup>22</sup>

DTCC believes that, with respect to the standard processing of advance notices, the Commission should make the following changes in the foregoing procedures:

*Confidential Treatment of Advance Notices*

The Proposed Rules require (i) the Commission to publish advance notices for public comment and (ii) designated clearing agencies to retain a file of advance notices and written communications related thereto for public inspection and copying. The Proposed Rules also require designated clearing agencies to post advance notices, and amendments thereto, on their website. These requirements are collectively referred to in this letter as the “Public Disclosure Requirements”.

DTCC has serious concerns with respect to the Public Disclosure Requirements for advance notice filings. Given that the changes which require advance notice filings affect risk and risk management controls, they may intrinsically involve matters of great sensitivity, which are not appropriate for public disclosure. If public disclosure of advance notice filings is required, designated clearing agencies *must* be able to request confidential treatment of all or part of an advance notice filing and any related material (including, in certain circumstances, the fact of the filing itself) where the public disclosure of the notice or any such related material would (i) jeopardize the ability of the designated clearing agency to successfully achieve the objective of the proposed change which is the subject of the advance notice or (ii) disclose sensitive non-public information. DTCC requests that the Commission modify the Proposed Rules to permit designated clearing agencies to make such confidential treatment requests.

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<sup>19</sup> See Section 806(e)(1)(F) of the Dodd-Frank Act.

<sup>20</sup> See Sections 806(e)(1)(G)-(H) of the Dodd-Frank Act.

<sup>21</sup> See Section 806(e)(1)(I) of the Dodd-Frank Act.

<sup>22</sup> See 75 Fed. Reg. at 82505.

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DTCC notes that the Rules and Regulations of the Commodity Futures Trading Commission relating to advance notice filings, which became effective on September 26, 2011, permit systemically important derivatives clearing organizations to file a request for confidential treatment in connection with an advance notice filing<sup>23</sup> and to redact confidential information from documents that are required to be published.<sup>24</sup>

Submissions to the Board of Governors

Section 806(e)(3) of the Dodd-Frank Act requires the Commission to, among other things, provide the Board of Governors with any notice, request or other information that it receives under Section 806(e) of the Dodd-Frank Act. The Proposed Rules would discharge this obligation of the Commission by requiring that a designated clearing agency provide the Board of Governors with three copies, in hard copy format, of all materials submitted to the Commission relating to an advance notice.

DTCC believes that requiring advance notices and related materials to be submitted to the Board of Governors in hard copy (although they must be submitted to the Commission electronically) would place an unnecessary financial and administrative burden on designated clearing agencies. DTCC believes that the objectives of Section 806(e)(3) of the Dodd-Frank Act would be achieved more efficiently if submissions were permitted to be made to the Board electronically. We would suggest that the Commission work with the Board of Governors to enable designated clearing agencies to submit advance notices and related materials to the Board electronically, and revise the Proposed Rules to reflect such change.

**CONCLUSION**

DTCC appreciates the opportunity to offer these comments to the Commission in connection with the implementation of Section 806(e) of the Dodd-Frank Act. Should the staff wish to discuss these comments further, please contact the undersigned at 212-855-3240 or lthompson@dtcc.com.

Sincerely yours,



Larry E. Thompson

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<sup>23</sup> See 17 C.F.R. Part 40.8, as revised by 76 Fed. Reg. 44776 (July 27, 2011).

<sup>24</sup> See 17 C.F.R. Parts 40.6 and 40.10, as revised by 76 Fed. Reg. 44776.