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The Depository Trust & Clearing Corporation
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August 5, 2009

Ms. Florence E. Harmon, Acting Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

Re: Self Regulatory Organizations; The Depository Trust Company, Fixed Income Clearing Corporation, and National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to Economic Sanctions and Embargo programs Administered and Enforced by the Office of Foreign Assets Control; Release No 34-59917; File Nos. SR-DTC-2009-07, SR-FICC-2009-06, SR-NSCC-2009-03

Dear Ms. Harmon:

On March 31, 2009, April 1, 2009, and April 22, 2009, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 19b-4 thereunder, the Fixed Income Clearing Corporation ("FICC"), the National Securities Clearing Corporation ("NSCC") and the Depository Trust Company ("DTC") respectively (collectively referred to as the "Clearing Agencies"), filed with the Securities Exchange Commission (the "SEC" or the "Commission") proposed rule changes on Form 19b-4 to clarify the obligations of the Participants, Limited Purpose Participants, Pledgees, Members and Limited Members of the Clearing Agencies (collectively referred to as "Participants and Members") related to the economic sanctions and embargo programs administered and enforced by the Office of Foreign Assets Control ("OFAC"). In the Filings, the Clearing Agencies clarified the obligation of Participants and Members to comply with the economic sanctions and embargo programs administered and enforced by OFAC and required Participants and Members subject to the jurisdiction of the U.S. ("U.S. Participants and Members") to provide the Clearing Agencies with a confirmation that it has established a risk-based OFAC Program. On May 21, 2009, pursuant

to Section 19(b)(1) of the Exchange Act, the Commission published notice of the Proposed Rule Changes in the Federal Register.

The Clearing Agencies appreciate this opportunity to respond to the comment letters submitted by the American Bankers Association (ABA) and jointly by the Securities Industry and Financial Markets Association (SIFMA) and The Clearing House. The comment letters opposed the requirements that the Clearing Agencies would impose on U.S. Participants and Members, or in the alternative, requested that certain changes be made to the requirements of the Proposed Rule Changes.

The changes made pursuant to the Proposed Rule Changes were intended to accomplish two separate goals related to the Clearing Agencies' obligations pursuant to the sanctions administered and enforced by OFAC. First, the rules were updated to explicitly require that Participants and Members activities and transactions ("Business") introduced to the Clearing Agencies must comply with the sanctions administered and enforced by OFAC. Second, the proposed rule change, and specifically the requirement that U.S. Participants and Members execute a "Confirmation of an OFAC Program" letter ("OFAC Letter"), was intended to act as a component of the Clearing Agencies' own risk-based OFAC compliance program. As a U.S. person subject to the jurisdiction of the United States, the Clearing Agencies are required to comply with sanctions administered and enforced by OFAC and develop its own risk-based OFAC program.

In developing measures to enhance its risk-based OFAC compliance program, the Clearing Agencies consulted guidance issued by OFAC, specifically recent guidance provided directly to the securities industry,[1] and consulted with OFAC regarding its proposed changes. In developing this requirement, the Clearing Agencies considered of special importance to its risk-based OFAC program the guidance from OFAC that firms take special caution where the underlying customer in a transaction is not transparent and the recommendation that firms with shared relationships document who is actually conducting OFAC screening.[2]

In developing the actual language of the OFAC Letter, the Clearing Agencies did review versions of the proposed document with, and solicit feedback from, various parties and groups representing those that would be impacted by the proposed rule change, including the members of SIFMA's Anti-Money Laundering Committee and several large banking institutions and broker-dealers. Based on the feedback that was received, the Clearing Agencies did consider the

[1] DTC specifically reviewed Risk Factors for OFAC Compliance in the Securities Industry (2008), available at: http://www.ustreas.gov/offices/enforcement/ofac/policy/securities_risk_11052008.pdf and Opening a Securities Account from an OFAC Perspective (2008), available at http://www.ustreas.gov/offices/enforcement/ofac/articles/securities_future_accounts_11052008.pdf.

[2] See Risk Factors for OFAC Compliance in the Securities Industry, pg. 3 (2008), available at: http://www.ustreas.gov/offices/enforcement/ofac/policy/securities_risk_11052008.pdf.

changes suggested by these parties and made revisions that were consistent with the Clearing Agencies' analysis of their OFAC risks and the Clearing Agencies' risk-based OFAC program.

Nonetheless, both commenters opposed the proposed rule change or suggested modifications to the language of the OFAC Letter. Both commenters indicated that the requirement to provide an OFAC Letter was duplicative of the current requirement to provide a general statement about the Participant or Members OFAC program as part of DTC's Know Your Customer program ("KYC Letter"). Although the current letter received from Participants as part of its KYC does contain language relating to the Participant's OFAC program, this representation is utilized specifically as part of DTC's AML program and is not sufficient based on OFAC guidance. In addition, not all Participants and Members across the Clearing Agencies and even within DTC are required to submit the KYC Letter.

Secondly, both commenters indicated that this process was inconsistent with, or duplicative of, the current certification that is done for deposits. Although DTC continues to require U.S. Participants to certify each individual deposit and this remains a valuable tool to assist DTC in mitigating its OFAC risk, it does not cover all activity that is subject to sanctions administered and enforced by OFAC that U.S. Participants and Members may conduct through DTC or through any of the other Clearing Agencies. The Clearing Agencies determined that it would be more cost effective for the industry to have U.S. Participants and Members execute an OFAC Letter that covered all additional activities at the Clearing Agencies rather than implementing additional certification processes for the myriad of systems and activities that Participants and Members can conduct through the Clearing Agencies. The alternative would be to create a separate certification for each additional activity and would require U.S. Participants and Members to execute certifications each and every time they processed a transaction through the Clearing Agencies. In contrast, the proposed OFAC Letter provides for a blanket certification to cover all transactions conducted through the Clearing Agencies. Therefore, the OFAC Letter will actually substantially reduce the burden on the U.S. Participants and Members in comparison to the alternative of obtaining an individual certification for each transaction or activity conducted through the Clearing Agencies.

Both comment letters indicated that paragraph two of the OFAC Letter imposed additional legal obligations that were inconsistent with OFAC guidance and industry standards. The language as written was intended to clarify that U.S. Participants and Members are required to screen customers at a minimum, which is consistent with OFAC guidance. In addition, the Clearing Agencies were requiring that the U.S. Participant's and Member's risk-based OFAC program ***consider*** screening additional parties, including direct and indirect owners, controlling parties or other third parties, based on its evaluation of risk factors enumerated by OFAC. This approach is consistent with guidance issued by OFAC. The Clearing Agencies fully realize that the scope of this additional screening is dependent upon various risk factors enumerated by

OFAC. In order to clarify the intent of paragraph two, the Clearing Agencies are modifying the requirement to state:

> As part of its risk-based compliance program, *[User name]* screens customers, as well as other parties as applicable based on the *[User name]*'s risk assessment, against the most recent version of OFAC's List of Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Global Terrorists, Foreign Terrorist Organizations, Specially Designated Narcotics Traffickers, and against any other lists maintained by OFAC (collectively referred to as the "SDN List").

The Clearing Agencies believe that this revised language is sufficient to clarify the screening standards for U.S. Participant's or Member's risk-based OFAC Program, which is consistent with guidance issued by OFAC. Therefore, this requirement does not impose any additional obligations beyond those imposed by the sanctions administered and enforced by OFAC.

Additionally, both commentators also indicated that the language within the third paragraph of the Confirmation of an OFAC Program ("OFAC Letter") requiring U.S. Participants and Members to certify that they would exclude any transaction that violated OFAC from its Business at the Clearing Agencies was too broad and was inconsistent with the requirement that U.S. Participants and Members implement a risk-based OFAC program. It was and continues to be the intent of the Clearing Agencies that the representation regarding conducting activity through the Clearing Agencies that violates OFAC be consistent with OFAC Enforcement Guidelines that recognizes inadvertent violations. This approach is consistent with the U.S. Participant's or Member's risk-based OFAC program and does not to impose the higher burden that the commenters inferred from the language contained in the original OFAC Letter. The Clearing Agencies have modified the language of this provision in an attempt to clarify the requirement to state:

> Based on the screening conducted pursuant to the *[User name]*'s risk-based OFAC compliance program, *[User name]* will not submit any Business to the Clearing Agencies that *[User name]* knows to be subject to OFAC sanctions regulations, unless otherwise authorized by OFAC.

In order for the representation of the U.S. Participants and Members to be adequate from a risk-based perspective, it is important they affirmatively state that they are excluding transactions that have been identified as violating OFAC from the business it introduces to the Clearing Agencies to the extent such activity is identified through the U.S. Participant's or Member's risk-based OFAC Program. The Clearing Agencies believe that this modified language strikes the appropriate balance between the strict liability imposed by the sanctions administered and enforced by OFAC and the risk-based approach that is permitted and encouraged by OFAC. When determining the U.S. Participant's or Member's knowledge of activity that is subject to

OFAC sanctions regulations, the Clearing Agencies will utilize standards established pursuant to the OFAC Economic Sanctions Enforcement Guidelines. Under the current OFAC Economic Sanctions Enforcement Guidelines,[3] U.S. Participants and Members are attesting that they will not to submit Business to DTC that willfully or recklessly violate OFAC sanctions regulations where the U.S. Participant or Member has actual knowledge or reason to know of the violation. The Clearing Agencies will rely on determinations made by OFAC or other competent authorities to determine whether Participants and Members are in compliance with this obligation.

The comment letter submitted by SIFMA and The Clearing House requested clarification of the how U.S. Participant and Member would calculate when to execute an updated OFAC Letter to satisfy the requirement that this be provided to the Clearing Agencies every two years. To clarify, the OFAC Letter will need to be executed every two years from the date on which the current OFAC Letter was executed (i.e. the execution date). Therefore, if the OFAC Letter executed by the Participant or Member is dated March 1, 2010, the U.S. Participant or Member must execute an updated OFAC Letter on or before March 1, 2012. Because of the potential for different renewal dates, the Clearing Agencies will remind individual U.S. Participants and Members of its obligation to execute an updated OFAC Letter approximately ninety (90) days prior to the expiration of the current OFAC Letter. This reminder will be in addition to the Important Notice that will remind U.S. Participants and Members generally of this obligation every two years. Although the combination of the Important Notice and the individual notices to U.S. Participants and Members are intended to remind U.S. Participant's or Member's of their obligation to execute the updated OFAC Letter, it is ultimately the responsibility of the U.S. Participant or Pledgee to satisfy the rules of the Clearing Agencies regarding the OFAC Letter.

Additionally, the comment letter received from SIFMA and The Clearing House addressed whether the $5,000 fine for failure to provide an executed OFAC Letter in a timely manner is consistent with the harmonization of the fines previously conducted by the Clearing Agencies. The imposition of a $5,000 fine for failure to provide the OFAC Letter is not specifically addressed in the failures described in the Important Notice, which generally address fines associated with ongoing notification obligations. DTC considers the fine appropriate given the nature of the documentation being requested and is consistent with the Clearing Agencies' general approach of imposing a $5,000 fine for what it considers "Minor Rule Violations."

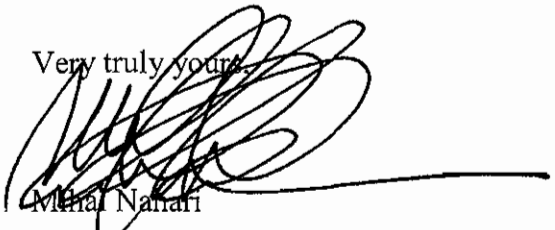
Finally, the comment letter received by SIFMA and The Clearing House also requested clarification regarding the liability for any fines imposed if a U.S. Participant or Member did not submit the required OFAC Letter in a timely manner. The execution of the OFAC Letter is the

[3] The OFAC Economic Sanctions Enforcement Guidelines are contained within 31 C.F.R. Part 501 Appendix A. OFAC has proposed revisions to the Economic Sanctions Enforcement Guidelines which are available at http://www.ustreas.gov/offices/enforcement/ofac/policy/enf_guide_09082008.pdf.

legal responsibility of the Participant or Member and not personal obligation of the Chief Compliance Officer, OFAC Compliance Officer or other representative with responsibility for managing the OFAC compliance program of the U.S. Participant or Member. The Clearing Agencies' rules only apply to the legal entity that is the Participant or Member. Therefore, the fine is imposed against the U.S. Participant or Member and is the legal obligation of the U.S. Participant or Member and not the person with authority to make the representations on behalf of the U.S. Participant or Member. The Clearing Agencies have clarified this by updating the OFAC Letter to clearly state the OFAC Officer is executing the OFAC Letter on behalf of the User.

If you have any questions or would like to discuss these comments further, please contact the undersigned at 212-855-3295 or mnahari@dtcc.com.

Very truly yours,



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