

**Mihal Nahari**  
Chief Compliance Officer  
Office Of Corporate and  
Regulatory Compliance



Tel: 212 855 3295  
Fax: 212 855 3215  
mnahari@dtcc.com

**The Depository Trust &  
Clearing Corporation**  
55 Water Street  
New York, NY 10041-0099

November 6, 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 34-60660; File Nos. SR-DTC-2009-14, SR-FICC-2009-07 SR-NSCC-2009-09

Dear Ms. Harmon:

On August 26, 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") (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 amended the previous version of the "Confirmation of an OFAC Program" letter ("OFAC Letter") and further clarified the obligation of Participants and Members to comply with the economic sanctions and embargo programs administered and

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

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 letter submitted jointly by the Securities Industry and Financial Markets Association (“SIFMA”) and The Clearing House. The Clearing Agencies would like to thank SIFMA and The Clearing Houses for their continued cooperation in revising the language of the OFAC Letter and appreciates their recognition that the revised version of the OFAC Letter is reflective of the risk-based program encouraged by OFAC. Based on conversations with OFAC and with SIFMA and The Clearing House, the Clearing Agencies consider the OFAC Letter as an effective and important aspect of its risk-based OFAC Program and to be consistent with both industry-wide published guidance and specific guidance provided by OFAC to the Clearing Agencies. After further discussions of this matter with the representatives of the SEC and OFAC, the Clearing Agencies reaffirm the rationale for the requirements to submit an OFAC Letter and the decision to impose a \$5,000 fine expressed in our original response dated August 5, 2009, and will not repeat that rationale again here. Therefore, we recommend that the SEC not withdraw the Clearing Agencies’ Proposed Rules.

The Clearing Agencies would like to address the only new concern expressed in the comment letter received from SIFMA and The Clearing House, which requested clarification of the process used to distribute and remind Participants and Members of their obligation to return the OFAC Letter. Before, addressing the specific concerns expressed in the comment letter received from SIFMA and The Clearing House, the Clearing Agencies would like to describe the process that was used to distribute the initial OFAC Letter.

Prior to sending the OFAC Letter to the Participants and Members, the Clearing Agencies contacted members of each Participant and Member to identify the appropriate OFAC Compliance Officer, Chief Compliance Officer or person otherwise responsible for managing the OFAC or sanctions compliance program (“Authorized OFAC Officer”). Once this information was obtained, the Clearing Agencies sent emails to the identified Authorized OFAC Officer(s) at each Participant or Member reminding the Authorized OFAC Officers of the obligation and requesting confirmation that they are the appropriate person to execute the OFAC Letter or alternatively to identify the appropriate person. The Clearing Agencies utilized the contact information for the Authorized OFAC Officers provided by the Participants and Members to begin individual dissemination of the OFAC Letters to the Participants and Members on October 1, 2009. Therefore, the distribution was only targeted to those individuals who had previously been identified by the Participants and Members as the Authorized OFAC Officer.<sup>1</sup>

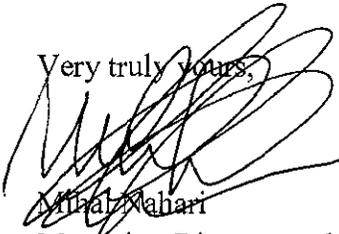
<sup>1</sup> The Authorized OFAC Officer will also be the person who receives any future reminders. Similarly, the Clearing Agencies will only accept the OFAC Letter from individuals who the Participants and Members have previously been designated as Authorized OFAC Officers or have subsequently been determined to be authorized to execute the OFAC Letter.

In addition to this tailored distribution, as required by clearing agency regulations, the Clearing Agencies also published Important Notices containing a link to the OFAC Letter available on the website for the Clearing Agencies, which were distributed to Compliance Officers, Managing Offers, and Operations Officer to generally notify the industry of the requirements and the implementation of the process. Because the distribution of the Important Notice was broader than the tailored email distribution, it is possible that persons other than the Authorized OFAC Officer incorrectly interpreted this Important Notice as requiring them to execute the OFAC Letter. This may account for the actions being taken by relationship managers or operations personnel noted by SIFMA and The Clearing House.

The Clearing Agencies believe that the Proposed Rule Changes and the Important Notices that were published provide sufficient notice of the procedures that will be used to distribute and collect the OFAC Letters and that no additional amendments to the Proposed Rule Changes are required. Participants and Members should develop sufficient internal procedures to ensure that they properly manage the designation of an Authorized OFAC Officer, update the Clearing Agencies of any changes to the Authorized OFAC Officer, and track the execution and return of the OFAC Letter. As indicated in the Proposed Rule Change and the Important Notices, based on information in the possession of the Clearing Agencies, the Clearing Agencies will remind the Authorized OFAC Officer(s) for each Participant or Member of its obligations approximately ninety (90) days prior to the date on which the OFAC Letter is due, but it is the obligation of the Participant or Member to satisfy this requirement and to provide up-to-date information to the Clearing Agencies to facilitate this process.

Based on the foregoing and the prior responses submitted, the Clearing Agencies believe that there is no basis for the SEC to withdraw the Clearing Agencies' rule requiring the OFAC Letter. 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](mailto:mnahari@dtcc.com).

Very truly yours,



Mital Nahari

Managing Director and Chief Compliance Officer