SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101685; File Nos. SR-DTC-2024-003; SR-FICC-2024-006; SR-NSCC-2024-003)

November 21, 2024

Self-Regulatory Organizations; The Depository Trust Company; Fixed Income Clearing Corporation; National Securities Clearing Corporation; Order Approving 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, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder (the "Proposed Rule Changes").[2] The Proposed Rule Changes were published for comment in the Federal Register on March 26, 2024.[3] The Commission has received comments on the changes proposed.[4] For the reasons discussed below, the Commission is approving the Proposed Rule Changes.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 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").

4 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. The comments generally relate to issues raised in other FICC proposed rule changes that are not relevant to the Notices of Filing. See, Securities Exchange Act Release Nos. 99817 (SR-FICC-2024-005) and 99844 (SR-FICC-2024-007). The Commission considers the relevant comments related to the FICC Notice of Filing in its analysis at Section IV infra.

II. BACKGROUND

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.[5] The adopted rules also require that these policies and procedures be reviewed annually by the board of directors of such covered clearing agencies for U.S. Treasury securities.[6] Currently, FICC is the only Clearing Agency providing clearance and settlement services to the U.S. Treasury securities market.

To address the new requirements, the Clearing Agencies propose to amend their Clearing Agency Risk Management Framework ("Framework).[7] Specifically, the Proposed Rule Changes would add a new section to the Framework regarding "Solicitation of Participant and Stakeholder Views". This subsection would: (i) describe generally Clearing Agency participant and industry stakeholder outreach in the development and evaluation of new programs or risk management practices, and (ii) provide for the annual review of FICC's Government Securities Division ("GSD") access

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5 See 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, Exchange Act Release No. 99149 (Feb. 15, 2023), 88 FR 13872 (Jan. 16, 2024) (S7-23-22) ("Treasury Clearing Adopting Release").

6 17 CFR 240.17ad-22(e)(18)(iv)(C).

7 The 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.

models by FICC's Board of Directors. The proposal would also make other conforming and clean up changes to the text of the Framework, as described below.

III. DESCRIPTION OF THE PROPOSED RULE CHANGES

A. Subsection 3.4.1 General Solicitation of Views

The Clearing Agencies state that they 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.[8] To codify this practice, the proposal would add a new subsection to the Framework (entitled "General Solicitation of Views"), which identifies several ways that the Clearing Agencies may seek the views of participants and stakeholders. Such methods would include targeted outreach to firms expected to be impacted by a proposal, widely distributed surveys, ad hoc forums, and standing advisory councils assembled to consider issues relevant to a proposal. This list of outreach methods is illustrative, not exhaustive.

The subsection would also identify the industry stakeholders that may participate in such advisory councils, including for example, 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 subsection 3.4.1 do not create any obligation for the Clearing Agencies to conduct such outreach in any particular circumstances.[9]

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8 See DTC Notice of Filing, supra note 3, 89 FR at 21119; FICC Notice of Filing, supra note 3, 89 FR at 21069; and NSCC Notice of Filing, supra note 3, 89 FR at 21091.

9 See DTC Notice of Filing, supra note 3, 89 FR at 21119; FICC Notice of Filing, supra note 3, 89 FR at 21069; and NSCC Notice of Filing, supra note 3, 89 FR at 21092.

B. Subsection 3.4.2 Required Solicitation of Views – Annual Review of GSD Access Models

The Clearing Agencies propose adding a new subsection to the Framework (entitled "Required Solicitation of Views – Annual Review of GSD Access Models") in connection with the recently adopted requirement in Rule 17ad-22(e)(18)(iv)(C) that the board of directors of a covered clearing agency annually review the policies and procedures that the covered clearing agency uses 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.[10] To assist the board in their review of GSD access models, the Proposed Rule Changes would establish an advisory council comprised of participants, their customers, and other industry stakeholders. This advisory council review of GSD's access models would be escalated to the FICC Board of Directors, or a committee thereof, with its annual review of GSD's access models, which would also be required by this new subsection.

FICC's goal in the annual review of FICC/GSD's access models is to determine whether the GSD Clearing Rules and any other written policies and procedures are reasonably designed to ensure appropriate and flexible means to facilitate access to clearance and settlement of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants.[11] In furtherance of this goal, the new subsection would require that the annual review include the following: (1) document any instance in which FICC treats transactions differently based on either the identity of the

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10 17 CFR 240.17ad-22(e)(18)(iv)(C).

11 See DTC Notice of Filing, supra note 3, 89 FR at 21119; FICC Notice of Filing, supra note 3, 89 FR at 21069; and NSCC Notice of Filing, supra note 3, 89 FR at 21092.

submitting participant, the fact that an indirect participant is a party to the transaction, the method of execution, or any other way, and confirm that any variation in treatment is both necessary and appropriate to meet the minimum standards regarding, among other things, operations, governance, and risk management identified in the Standards for Covered Clearing Agencies; (2) consider whether to enable GSD's Netting Members, as defined in the GSD Rules,[12] to submit eligible transactions for clearance and settlement that have been executed by two indirect participants of FICC/GSD ("done-away"); (3) consider the volumes and proportion of the markets that are being centrally cleared through different access models in determining whether FICC/GSD's access models are meeting the needs of the market; 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.[13]

C. Other Conforming and Clean Up Changes

The proposal would make other conforming and clean up changes to the Framework. The Clearing Agencies would amend Section 1 of the Framework to: (1) include the annual review of GSD's access models in the list of regulatory requirements that are addressed in the Framework, and (2) update the description of the contents of Section 3 of the Framework to include the solicitation of participant and stakeholder

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12 See Fixed Income Clearing Corporation Government Securities Division Rulebook, Rule 1 (defining Netting Member and associated terms), available at https://www.dtcc.com/~/media/files/downloads/legal/rules/ficc_gov_rules.pdf.

13 In a separate proposed rule change, FICC proposed to add a framework to consider an applicant who does not meet the eligibility requirements of any existing categories. See Securities Exchange Act Release No. 99817 (Mar. 21, 2024), 89 FR 21362, 21373 (Mar. 27, 2024) (File No. SR-FICC-2024-005).

views and annual review of GSD's access models as part of the Clearing Agencies' management of risks.

The Clearing Agencies would also 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 change would allow the Framework to continue to be accurate notwithstanding any future name changes to the committee.[14]

Other minor grammatical and clean up changes would also be made to the Framework.

IV. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Act[15] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After carefully considering the Proposed Rule Changes, the Commission finds that the Proposed Rule Changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Clearing Agencies. In particular, the Commission finds that the Proposed Rule Changes

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14 See DTC Notice of Filing, supra note 3, 89 FR at 21120; FICC Notice of Filing, supra note 3, 89 FR at 21070; and NSCC Notice of Filing, supra note 3, at 3.

15 15 U.S.C. 78s(b)(2)(C).

are consistent with Section 17A(b)(3)(F)[16] of the Act and Rule 17Ad-22(e)(18)(iv)(C),[17] each promulgated under the Act.

A. Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible.[18]

As described above in Section III.A, the Clearing Agencies routinely solicit their participants' and other industry stakeholders' views. The Proposed Rule Changes would codify that the Clearing Agencies use this practice, which should help ensure that the Clearing Agencies have mechanisms in place to be informed of the views of their participants and other industry stakeholders. By allowing specifically for formal engagement and transparency on their risk management practices, the Proposed Rule Changes should continue to encourage communication and provide a formal mechanism to help the Clearing Agencies identify and evaluate any unintended consequences a proposal or practice may have on its direct and indirect participants and obtain recommendations on how to meet its goals through alternative approaches. In addition, as described in Section III.B, the Proposed Rule Changes would establish an annual advisory council for FICC's GSD to assist the FICC Board of Directors, or a committee thereof, in its required annual review of GSD access models, and the Proposed Rule

16 15 U.S.C. 78q-1(b)(3)(F).

17 17 CFR 240.17ad-22(e)(18)(iv)(C).

18 See supra note 13.

Changes would also identify several things that the advisory council would have to do as part of its review. Adopting this advisory council and a plan for its work, as well as requiring annual review by the FICC Board of Directors, should help FICC work to meet its regulatory obligations to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it has appropriate means to facilitate access, including for indirect participants, to its clearance and settlement services by providing a method by which FICC can be informed by its participants and other industry stakeholders as to access issues. This change should help ensure that FICC solicits and considers such views when making decisions about how to structure its access models, which should, in turn, help further continued prompt and accurate clearance and settlement in the U.S. Treasury market, consistent with Section 17A(b)(3)(F) of the Act.[19]

Finally, the proposed conforming and clean-up changes should help to ensure that the Framework is clear and accurate. The risk management functions described in the Framework allow the Clearing Agencies to continue their critical operations and services, and better understanding of the Framework should help promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[20]

Accordingly, and for the reasons stated above, the Commission finds that the Proposed Rule Changes are consistent with Section 17A(b)(3)(F) of the Act.

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19 15 U.S.C. 78q-1(b)(3)(F).

20 15 U.S.C. 78q-1(b)(3)(F).

B. Section 17Ad-22(e)(18)(iv)(C) of the Act

Section 17Ad-22(e)(18)(iv)(C) under the Act requires, among other things, that a covered clearing agency serving the U.S. Treasury market, like FICC, establish, implement, maintain, and enforce written policies and procedures 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, and that the board of directors for the covered clearing agency, like FICC, annually review such policies and procedures.[21] The Proposed Rule Changes, as described in Section III.B above, would establish an advisory council and framework for that council's work and would provide for annual review by the FICC Board of Directors as to FICC's policies and procedures regarding access to its clearance and settlement services.

One commenter addressed certain aspects of this proposal. Specifically, the commenter states that FICC's rules "should provide that indirect participants will be allotted at least 50% of the representation on the council."[22] The Commission agrees that indirect participant representation on the proposed council is important. Under the Proposed Rule Changes, the advisory council would include representatives not only from FICC participants, but also their customers, that is, indirect participants who rely on FICC's services to access FICC's clearance and settlement services. Though not required, the use of an advisory council is consistent with Rule 17ad-22(e)(18)(iv)(C), and that rule

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21 17 CFR 240.17ad-22(e)(18)(iv)(C).

22 Letter from Jiri Krol, Deputy CEO, Global Head of Government Affairs, Alternative Investment Management Association, at 8 (Apr. 23, 2024), available at https://www.sec.gov/comments/sr-ficc-2024-006/srficc2024006.htm ("AIMA Letter").

does not mandate the particular composition of the advisory council that FICC has chosen to establish.

The Commission recently adopted Rule 17ad-25(j)[23] which requires each registered clearing agency to 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. The Commission therefore has given clearing agencies discretion in the design and structure of stakeholder outreach.[24] The Commission also stated in the Rule 17ad-25(j) final rule release that such "other relevant stakeholders" generally would include investors, customers of clearing agency participants, and securities issuers.[25]

Pursuant to the Proposed Rule Changes, FICC would include indirect participants on its advisory council. The Commission supports the inclusion of indirect participants and encourages FICC to solicit views from a variety of indirect participants who may have differing needs.

The commenter further stated that FICC should, "explicitly describe how and to what extent the feedback and recommendations made by the indirect participant members on the council (or indirect participants at large) will be considered and/or incorporated into the review process and potential changes to the access models."[26] Within the Proposed Rule Changes, FICC has outlined specific points of consideration, and specific

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23 17 CFR 240.17ad-25(j).

24 Clearing Agency Governance and Conflicts of Interest, Securities Exchange Act Release No. 98959 (Nov. 16, 2023), 88 FR 84454, 84483 (Dec. 5, 2023).

25 See id.

26 AIMA Letter, supra note 22, at 8.

data to document and analyze in furtherance of the annual review by the Board of Directors, or a committee thereof, of GSD access models as noted in Section III.B above. In addition, pursuant to the Proposed Rule Changes, the advisory council's review would be escalated to the FICC Board of Directors, or a committee thereof, to assist in their annual review. Rule 17ad-22(e)(18)(iv)(C) does not require the use of an advisory council.

Accordingly, the Commission finds that the Proposed Rule Changes are consistent with the requirements of Rule 17ad-22(e)(18)(iv)(C).[27]

V. CONCLUSION

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[28] and the rules and regulations promulgated thereunder.

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27 17 CFR 240.17ad-22(e)(18)(iv)(C).

28 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act[29] that proposed rule changes SR-DTC-2024-003, SR-FICC-2024-006, and SR-NSCC-2024-003 be, and hereby are, APPROVED.[30]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

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29 15 U.S.C. 78s(b)(2).

30 In approving the Proposed Rule Changes, the Commission considered their impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

31 17 CFR 200.30-3(a)(12).