

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84426; File No. SR-DTC-2018-008)

October 15, 2018

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Clearing Agency Policy on Capital Requirements and the Clearing Agency Capital Replenishment Plan

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 4, 2018, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to (i) the Clearing Agency Policy on Capital Requirements (“Capital Policy” or “Policy”) of DTC and its affiliates, National Securities Clearing Corporation (“NSCC”) and Fixed Income Clearing Corporation (“FICC,” and together with DTC and NSCC, the “Clearing Agencies”); and (ii) the Clearing Agency Capital Replenishment Plan (“Capital Replenishment Plan” or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4).

“Plan”) of the Clearing Agencies. In particular, the proposed revisions to the Capital Policy and Capital Replenishment Plan would (1) correct typographical errors and make other technical revisions to correct and simplify statements in the Policy and Plan; (2) replace references in the Policy and Plan to the “Credit Risk Capital Requirement” with the “Corporate Contribution;” and (3) update references in the Policy to the Recovery & Wind-down Plans of each of the Clearing Agencies, which were recently adopted by the Clearing Agencies, as described in greater detail below.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies are proposing to revise the Capital Policy and Capital Replenishment Plan, which were adopted by the Clearing Agencies in July 2017⁵ and are

⁵ See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR-DTC-2017-003, SR-FICC-2017-007, SR-NSCC-2017-004).

maintained by the Clearing Agencies in compliance with Rule 17Ad-22(e)(15) under the Act.⁶

Overview of the Capital Policy and Capital Replenishment Plan

The Capital Policy sets forth the manner in which each Clearing Agency identifies, monitors, and manages its general business risk with respect to the requirement to hold sufficient liquid net assets (“LNA”) funded by equity to cover potential general business losses so the Clearing Agency can continue operations and services as a going concern if such losses materialize.⁷ The amount of LNA funded by equity to be held by each of the Clearing Agencies for this purpose is defined in the Policy as the General Business Risk Capital Requirement. The Policy provides that the General Business Risk Requirement is calculated for each Clearing Agency as the greatest of three separate calculations – (1) an amount based on that Clearing Agency’s general business risk profile (“Risk-Based Capital Requirement”), (2) an amount based on the time estimated to execute a recovery or orderly wind-down of the critical operations of that Clearing Agency (“Recovery/Wind-down Capital Requirement”), and (3) an amount based on an analysis of that Clearing Agency’s estimated operating expenses for a six month period (“Operating Expense Capital Requirement”). On an annual basis, each of these three capital requirements are measured, and the General Business Risk Capital Requirement for each Clearing Agency are determined as the greatest of these calculations.

Currently, the Capital Policy also addresses how each Clearing Agency maintains a portion of retained earnings as LNA funded by equity as its Credit Risk Capital

⁶ 17 CFR 240.17Ad-22(e)(15).

⁷ Id.

Requirement, as a part of its management of credit risk⁸ and pursuant to their respective rules.⁹ These resources are maintained to address losses due to a participant default, and are held in addition to the LNA funded by equity held by each of the Clearing Agencies as its General Business Risk Capital Requirement. The Capital Policy describes how each Clearing Agency's General Business Risk Capital Requirement and Credit Risk Capital Requirement fit within the Clearing Agencies' Capital Framework, where the Total Capital Requirement of each Clearing Agency is calculated as the sum of its General Business Risk Capital Requirement and Credit Risk Capital Requirement.

The Policy also provides a plan for the replenishment of capital through the Capital Replenishment Plan. The Capital Replenishment Plan was adopted by the Clearing Agencies as a plan for the replenishment of capital by each Clearing Agency should its equity fall close to or below the amount being held as its Total Capital Requirement pursuant to the Capital Policy. The Capital Replenishment Plan identifies the circumstances that would trigger implementation of the Plan; the roles, responsibilities, and guiding principles for implementation of the Plan; and an overview and description of each of the tools that may be used to replenish capital.

⁸ LNA funded by equity held as the Clearing Agencies' Credit Risk Capital Requirement is held in addition to resources held by the Clearing Agencies for credit risk in compliance with Rule 17Ad-22(e)(4) under the Act and in addition to resources held by the Clearing Agencies for liquidity risk in compliance with Rule 17Ad-22(e)(7). 17 CFR 240.17Ad-22(e)(4), (7).

⁹ The Rules, By-laws and Organizational Certificate of DTC ("DTC Rules"), the Rulebook of the Government Securities Division of FICC ("GSD Rules"), the Clearing Rules of the Mortgage-Backed Securities Division of FICC ("MBSD Rules"), or the Rules & Procedures of NSCC ("NSCC Rules," together with the DTC Rules, GSD Rules and MBSD Rules, the "Clearing Agencies' Rules" or "Rules"), available at <http://dtcc.com/legal/rules-and-procedures>.

Proposed Revisions to the Capital Policy and Capital Replenishment Plan

As described in greater detail below, the Clearing Agencies are proposing to make certain revisions to the Capital Policy and Capital Replenishment Plan.

First, the proposed revisions would correct typographical errors and make other technical revisions to correct and simplify statements in the Capital Policy and Capital Replenishment Plan. Second, the proposed revisions would replace references to the “Credit Risk Capital Requirement” with “Corporate Contribution.” This proposed change would reflect the implementation of recent revisions to the Clearing Agencies’ Rules regarding allocation of losses.¹⁰ Finally, the proposed revisions would update the description of the calculation of the Recovery/Wind-down Capital Requirement in the Capital Policy to clarify that the Recovery & Wind-down Plans of each of the Clearing Agencies have been adopted by the Clearing Agencies.¹¹

These proposed revisions are designed to enhance the clarity of the Policy and Plan and help ensure that they continue to operate as intended.

1. Technical Revisions

DTC is proposing technical revisions to the descriptions within the Capital Policy and Capital Replenishment Plan that would correct typographical errors, including, for example, removing a phrase that was incorrectly repeated in the same sentence. These

¹⁰ See Securities Exchange Act Release Nos. 83969 (August 28, 2018), 83 FR 44955 (September 4, 2018) (SR-DTC-2017-022); 83950 (August 27, 2018), 83 FR 44393 (August 30, 2018) (SR-DTC-2017-804).

¹¹ See Securities Exchange Act Release Nos. 83972 (August 28, 2018), 83 FR 44964 (September 4, 2018) (SR-DTC-2017-021); 83953 (August 27, 2018), 83 FR 44381 (August 30, 2018) (SR-DTC-2017-803).

revisions would also correct an error in Section 3 of the Policy, where the document was incorrectly referred to as the Plan.

Such revisions would also update the documents. For example, the proposed changes would replace references in the Capital Policy and Capital Replenishment Plan to the Finance/Capital Committee of the Boards, which was disbanded September 2017, with the Boards, which has taken on the responsibilities of this Committee set forth in the Policy and Plan. These revisions would also include updating the Capital Replenishment Plan to revise the name of the “Capital Contributions to DTCC Subsidiaries and Joint Ventures Policy” to the new name of this document, the “Capital Contributions Policy.”¹²

Finally, the proposed revisions would also simplify the descriptions in these documents. For example, these revisions would add a defined term for the Clearing Agencies’ Rules to the Policy in order to simplify references to such rules and procedures in this document.

2. *Addition of Corporate Contribution*

The proposed revisions would also replace references in the Capital Policy and Capital Replenishment Plan to the “Credit Risk Capital Requirement” with the “Corporate Contribution.” Currently, the Capital Policy describes how each Clearing Agency maintains a portion of retained earnings as LNA funded by equity as its Credit Risk Capital Requirement, in accordance with their respective Rules. Recently, the Clearing Agencies implemented revisions to their respective Rules to enhance the process by which they may allocate losses to their participants if the size of the losses exceed

¹² This document is an internal policy that governs how The Depository Trust & Clearing Corporation may invest capital in its subsidiaries, including the Clearing Agencies, as well as affiliated joint ventures and non-affiliated companies.

their prefunded resources.¹³ Such revisions included an amendment to the calculation and application of the amount of LNA funded by equity that are currently referred to in the Capital Policy and Capital Replenishment Plan as the Credit Risk Capital Requirement.

Specifically, the DTC Rules previously provided that DTC could, in its discretion and in such amounts as it would determine, charge its existing retained earnings and undivided profits to a loss or liability, to the extent that it is not satisfied by the Actual Participants Fund Deposit and Preferred Stock of the defaulting Participant. Pursuant to these recent changes, the DTC Rules require that DTC contribute an amount equal to 50 percent of DTC's General Business Risk Capital Requirement (as such amount is defined in the Capital Policy) ("Corporate Contribution") towards losses or liabilities arising from a Participant default or non-default event. DTC may also voluntarily apply amounts greater than the Corporate Contribution, as the DTC Board of Directors may determine. The Corporate Contribution applied to any losses arising from events that may occur during the next 250 business days would be reduced to the remaining unused portion of Corporate Contribution, if any.¹⁴

The amendments to the calculation and application of the resources that are now referred to as the Corporate Contribution did not change how these resources are described within the Policy or the Plan. The Corporate Contribution continues to represent resources maintained by the Clearing Agencies to address losses due to a

¹³ Supra note 10.

¹⁴ See supra notes 9 and 10.

participant default, as a part of their management of credit risk.¹⁵ These resources also are still held in addition to the LNA funded by equity held by each of the Clearing Agencies as its General Business Risk Capital Requirement.

Therefore, the Capital Policy and Capital Replenishment Plan would be revised to replace references to the Credit Risk Capital Requirement with references to the Corporate Contribution, and no other changes are needed to the description of this amount.

3. *Update References to the Recovery & Wind-down Plans of the Clearing Agencies*

The proposed revisions would also update the Capital Policy to make clear that the Recovery & Wind-down Plans of the Clearing Agencies have been adopted by the Clearing Agencies.¹⁶ Such references are currently made in connection with the description of the calculation of the Recovery/Wind-down Capital Requirement.

The Recovery/Wind-down Capital Requirement is an amount based on the time estimated to execute a recovery or orderly wind-down of the critical operations of that Clearing Agency and is used by the Clearing Agencies to determine their General Business Risk Capital Requirement. Each of the Clearing Agencies recently adopted a Recovery & Wind-down Plan, which provide plans for the recovery and orderly wind-down of each of the Clearing Agencies necessitated by credit losses, liquidity shortfalls,

¹⁵ As noted above, unlike the resources referred to in the Policy and Plan as the Credit Risk Capital Requirement, the Corporate Contribution would also be available to the Clearing Agencies to address losses due to events other than a participant default.

¹⁶ Supra note 11.

losses from general business risk, or any other losses.¹⁷ The Recovery & Wind-down Plans each include an analysis of the calculation of the Recovery/Wind-down Capital Requirement, based on the formula that is set forth in the Capital Policy.

The Clearing Agencies are proposing to revise the Capital Policy to make clear that the Recovery & Wind-down Plans have now been adopted by the Clearing Agencies.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Clearing Agencies believe that the Capital Policy and the Capital Replenishment Plan are both consistent with Section 17A(b)(3)(F) of the Act¹⁸ and Rule 17Ad-22(e)(15) under the Act,¹⁹ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of the Clearing Agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions, and 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.²⁰ Together, the Capital Policy and the Capital Replenishment Plan are designed to ensure that each of the Clearing Agencies hold sufficient LNA funded by equity to cover potential general business losses so that it can continue the prompt and accurate clearance and settlement of securities transactions and can continue to assure the safeguarding of securities and

¹⁷ Id.

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 17 CFR 240.17Ad-22(e)(15).

²⁰ 15 U.S.C. 78q-1(b)(3)(F).

funds which are in its custody or control or for which it is responsible if those losses materialize. By correcting errors and updating the Capital Policy and Capital Replenishment Plan to be consistent with recent changes implemented by the Clearing Agencies, the proposed revisions would allow the Clearing Agencies to maintain these documents to operate in the way they were intended. Therefore, such proposed revisions would be consistent with the requirements of Section 17A(b)(3)(F) of the Act.²¹

Rule 17Ad-22(e)(15) requires the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage their respective general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the Clearing Agencies can continue operations and services as a going concern if those losses materialize.²² As originally implemented, the Capital Policy and the Capital Replenishment Plan were designed to meet the requirements of Rule 17Ad-22(e)(15) under the Act.²³ As stated above, the proposed revisions would update the Capital Policy and Capital Replenishment Plan to be consistent with recent changes implemented by the Clearing Agencies. In this way, the proposed changes would allow the Clearing Agencies to maintain these documents in a way that to meet these requirements. Therefore, such proposed revisions would be consistent with the requirements of Rule 17Ad-22(e)(15) under the Act.²⁴

²¹ Id.

²² 17 CFR 240.17Ad-22(e)(15).

²³ See supra note 5.

²⁴ 17 CFR 240.17Ad-22(e)(15).

(B) Clearing Agency's Statement on Burden on Competition

Each of the Clearing Agencies believes that none of the proposed revisions to the Capital Policy and the Capital Replenishment Plan would have any impact, or impose any burden, on competition. The Policy and the Plan are maintained by the Clearing Agencies in order to satisfy their regulatory requirements and generally reflect internal tools and procedures. Tools and procedures that have a direct impact on the rights, responsibilities or obligations of members or participants of the Clearing Agencies are reflected in the Clearing Agencies' Rules. Accordingly, the Capital Policy and Capital Replenishment Plan themselves are documents that enhance the Clearing Agencies' regulatory compliance and internal management and do not have any impact, or impose any burden, on competition.

The proposed revisions to correct and update the Capital Policy and Capital Replenishment Plan would not affect any changes on the fundamental purpose or operation of these documents and, as such, would also not have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Clearing Agencies have not solicited or received any written comments relating to this proposal. The Clearing Agencies will notify the Commission of any written comments received by the Clearing Agencies.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁵ and paragraph (f) of Rule 19b-4 thereunder.²⁶ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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. Please include File Number SR-DTC-2018-008 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-DTC-2018-008. This file number should be included on the subject line if e-mail is used. To help the Commission process

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f).

and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-DTC-2018-008 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

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Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(12).