

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-60660; File Nos. SR-DTC-2009-14, SR-NSCC-2009-07, SR-FICC-2009-09)

September 11, 2009

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on August 26, 2009, The Depository Trust Company (“DTC”), the National Securities Clearing Corporation (“NSCC”), and the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Item I, II, and III, below, which Items have been prepared primarily by FICC, NSCC, and DTC (collectively, “Clearing Agencies”). The Clearing Agencies filed the proposed rule changes pursuant to Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(4) thereunder³ so that the proposals were effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations’ Statement of Terms of Substance of the Proposed Rule Changes

The Clearing Agencies are revising their rules to refine the obligations of their members or participants concerning the economic sanctions and embargo programs administered and enforced by the Office of Foreign Assets Control (“OFAC”) of the U.S. Department of the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(4).

Treasury.

II. Self-Regulatory Organizations' Statement of Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Clearing Agencies included statements concerning the purpose of and basis for the proposed rule change and discussed any comments they received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Clearing Agencies have prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of Purpose of, and Statutory basis for, the Proposed Rule Changes

On March 31, 2009, April 1, 2009, and April 22, 2009, FICC, NSCC, and DTC, respectively, filed proposed rule changes with the Commission to establish new OFAC compliance obligations.⁴ Specifically, the rule changes established a new requirement that certain members or participants subject to the jurisdiction of the U.S. submit a "Confirmation of an OFAC Program" Letter ("OFAC Letter") every two years. The OFAC Letter is intended to document that the U.S. member or participant has implemented a program to conduct appropriate risk-based OFAC screening and that the U.S. member or participant confirms that activity subject to OFAC sanctions regulations has been excluded from business conducted through the Clearing Agencies. The Clearing Agencies and Commission received two comment letters in response to those rule changes.⁵

Under this set of rule changes, the Clearing Agencies are revising the text of the OFAC

⁴ Securities Exchange Act Release No. 59917 (May 14, 2009), 74 FR 23907 (May 21, 2009).

⁵ NSCC received one comment letter from the American Bankers Association ("ABA") and one comment letter issued jointly by the Securities Industry and Financial Markets Association ("SIFMA") and The Clearing House.

Letter to address the concerns expressed in the comment letters. In addition, NSCC is amending the language of Rule 2, Section 4, of NSCC's Rules and Procedures to exclude Third Party Administrator Members and Investment Manager/Agent Member from the requirement to submit an OFAC Letter, and FICC is amending Article III, Rule 1, Section 7, of FICC's Mortgage Backed Securities Division's rules to exclude EPN-Only Members from the requirement to submit an OFAC Letter.

1. Certification of OFAC Screening

Both comment letters asserted that paragraph two of the OFAC Letter imposed additional obligations that were inconsistent with OFAC guidance and industry standards. After consultation with OFAC and the Commission and after further discussions with the commenters, the Clearing Agencies have agreed to modify the language of this provision in order to clarify that all Clearing Agencies' members or participants subject to the jurisdiction of the U.S. ("U.S. Members") are required to screen customer information for OFAC compliance but that the screening of customers alone may not be sufficient to address the U.S. Member's OFAC obligations.

2. Certification of Exclusion from Business

Both commentators indicated that the language within the third paragraph of the OFAC Letter was too broad and was inconsistent with the requirement that U.S. members or participants implement a risk-based OFAC program. The Clearing Agencies intended this provision to be consistent with the U.S. member's or participant's risk-based OFAC program; it was not the Clearing Agencies' intent to impose a greater burden. Accordingly, the Clearing Agencies, in consultation with OFAC and the Commission, have modified the language in the third paragraph to clarify that U.S. members or participants will not submit transactions they know are subject to OFAC sanctions regulations. When determining the U.S. members' or

participants' 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.⁶ These guidelines include willfully or recklessly violating OFAC sanctions regulations where the U.S. member or participant had 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 members or participants are in compliance with this obligation.

3. Filing the OFAC Letter and the Associated Fine

The commenters indicated that the time period for when U.S. members or participants must file the OFAC Letter was unclear. In an effort to clarify the time period, the Clearing Agencies will make the OFAC Letter available for execution by U.S. members or participants on or before October 1, 2009. NSCC must receive a validly executed OFAC Letter from all U.S. members or participants on or before March 31, 2010, in order for U.S. members or participants to satisfy the obligations imposed under these proposed rules. U.S. members or participants that fail to provide the Clearing Agencies with the OFAC Letter by March 31, 2010, will be subject to a \$5,000 fine for failure to provide the initial OFAC Letter. This fine is imposed for failure to provide documentation required under the Clearing Agencies' rules and the Clearing Agencies reserve the right to impose further fines or penalties up to and including ceasing to act on behalf of the member or participant for violation of the rules relating to the obligation of the member or participant to comply with OFAC sanctions regulations.

The OFAC Letter must to be executed every two years from the date on which the current

⁶ The OFAC Economic Sanctions Enforcement Guidelines are set forth in 31 C.F.R. Part 501 Appendix A. OFAC has proposed revisions to the Economic Sanctions Enforcement Guidelines which are available online at <http://www.ustreas.gov/offices/enforcement/ofac/policy/enf_guide_09082008.pdf>.

OFAC Letter was executed. Therefore, if the OFAC Letter executed by the member or participant is dated March 1, 2010, the U.S. member or participant must execute and provide the Clearing Agencies with an updated OFAC Letter on or before March 1, 2012. Because of the potential for different renewal dates, the Clearing Agencies will remind each individual U.S. member or participant of the expiration of its current OFAC Letter approximately ninety (90) days prior to the date due for the updated OFAC Letter. Additionally, the Clearing Agencies will send out an Important Notice every two years that will remind U.S. members or participants of this obligation generally. Although the combination of the Important Notice and the individual reminders are intended to remind U.S. members or participants about the obligation to execute the updated OFAC Letter, it is ultimately the responsibility of the U.S. member or participant to satisfy the requirements of the Clearing Agencies' rules regarding the OFAC Letter.

The execution of the OFAC Letter is the legal responsibility of the U.S. member or participant and not the responsibility of the Chief Compliance Officer, OFAC Compliance Officer, or other representative responsible for managing the OFAC compliance program ("Authorized OFAC Officer") of the U.S. member or participant. Therefore, the fine is imposed against the U.S. member or participant and is the legal obligation of the U.S. member or participant and not the Authorized OFAC Officer. To clarify this point, the OFAC Letter has been updated to indicate that the Authorized OFAC Officer is signing on behalf of the U.S. member or participant.

The Clearing Agencies believe that proposed rule changes are consistent with the requirements of Section 17A of the Act⁷ and the rules and regulations thereunder because they will enhance the Clearing Agencies' compliance with applicable laws thereby reducing risks and

⁷ 15 U.S.C. 78q-1.

associated costs to the Clearing Agencies and their members and participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Clearing Agencies believe that the proposed rule change will not have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

As part of the process of amending the OFAC Letter, the Clearing Agencies solicited and received comments from representatives of the industry groups that submitted comments to SR-NSCC-2009-03. The Clearing Agencies will notify the Commission of any additional written comments they receive.

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

The foregoing rule changes have become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(4)⁹ thereunder because each of the proposed rule changes effect a change in an existing service of one of the Clearing Agencies that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the Clearing Agencies or for which it is responsible and (ii) does not significantly affect the respective rights of the clearing agencies or persons using the service. At any time within sixty days of the filing of such rule changes, the Commission may summarily abrogate such rule changes 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

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(4).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are 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 No. SR-DTC-2009-14, SR-NSCC-2009-07, or SR-FICC-2009-09 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-DTC-2009-14, SR-NSCC-2009-07, or SR-FICC-2009-09. At least one of these file numbers should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings also will be available for inspection and copying at DTC's, NSCC's, and FICC's principal office and on DTC's, NSCC's, and FICC's Web sites, respectively at <http://ficc.com/gov/gov.docs>.

[jsp?NS-query=#rf](#)>, <http://www.dtcc.com/legal/rule_filings/nsc/2009.php>, and <<http://www.dtc.org/impNtc/mor/index.html>>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-DTC-2009-14, SR-NSCC-2009-07, or SR-FICC-2009-09 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.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).