

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97597; File No. SR-NSCC-2023-005)

May 25, 2023

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Clearing Agency Investment Policy

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 May 17, 2023, National Securities Clearing Corporation (“NSCC”) 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. NSCC 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 amends the Clearing Agency Investment Policy (“Investment Policy”, or “Policy”) of NSCC and its affiliates, The Depository Trust Company (“DTC”) and Fixed Income Clearing Corporation (“FICC,” and together with DTC, the “Clearing Agencies”). Specifically, the proposed rule change would amend the Investment Policy to (1) clarify obligations regarding the separation and segregation of

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).

funds deposited to a Clearing Agency's Participants Fund or Clearing Fund;⁵ (2) clarify roles and responsibilities related to credit reviews and setting investment limits; (3) update allowable investments for the respective Clearing Funds of NSCC and FICC and other investable funds; (4) include approvals required for longer term bank deposits and reverse repurchase investments; (5) remove descriptions of hedge transactions; and (6) make technical corrections and revisions to clarify and simplify statements in the Investment Policy, 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.

⁵ The respective Clearing Funds of NSCC and FICC, and the DTC Participants Fund are described in the Rules & Procedures of NSCC ("NSCC Rules"), the DTC Rules, By-laws and Organization Certificate ("DTC Rules"), the Clearing Rules of the Mortgage-Backed Securities Division of FICC ("MBSD Rules") or the Rulebook of the Government Securities Division of FICC ("GSD Rules"), respectively, available at <http://dtcc.com/legal/rules-and-procedures>. See Rule 4 (Clearing Fund) of the NSCC Rules, Rule 4 (Participants Fund and Participants Investment) of the DTC Rules, Rule 4 (Clearing Fund and Loss Allocation) of the GSD Rules and Rule 4 (Clearing Fund and Loss Allocation) of the MBSD Rules.

(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 Investment Policy, which was adopted in December 2016⁶ and is maintained in compliance with Rule 17Ad-22(e)(16) under the Act.⁷ The proposed changes to the Investment Policy would (i) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Fund, (ii) clarify roles and responsibilities related to credit reviews and setting investment limits, (iii) update allowable investments for the respective Clearing Funds of NSCC and FICC and other investable funds, (iv) include approvals required for longer term bank deposit and reverse repurchase investments, (v) remove descriptions of hedge transactions, and (vi) make technical corrections and revisions to clarify and simplify statements in the Investment Policy, as described in greater detail below.

Overview of the Investment Policy

The Investment Policy governs the management, custody and investment of cash deposited to the respective Clearing Funds of NSCC and FICC,⁸ the DTC Participants Fund,⁹ the proprietary liquid net assets (cash and cash equivalents) of the Clearing

⁶ See Securities Exchange Act Release No. 79528 (December 12, 2016), 81 FR 91232 (December 16, 2016) (SR-DTC-2016-007, SR-FICC-2016-005, SR-NSCC-2016-003).

⁷ 17 CFR 240.17Ad-22(e)(16).

⁸ Supra note 5.

⁹ Id.

Agencies, and other funds held by the Clearing Agencies pursuant to their respective rules.

The Investment Policy identifies the guiding principles for investments and defines the roles and responsibilities of DTCC staff in administering the Investment Policy pursuant to those principles. The Investment Policy is co-owned by DTCC's Treasury group ("Treasury") and the Counterparty Credit Risk team ("CCR") within DTCC's Group Chief Risk Office ("GCRO"). Treasury is responsible for identifying potential counterparties to investment transactions, establishing, and managing investment relationships with approved investment counterparties, and making and monitoring all investment transactions with respect to the Clearing Agencies. CCR is responsible for conducting a credit review of any potential counterparty, updating those reviews on a quarterly basis, and establishing an investment limit for each counterparty. CCR is also responsible for ongoing monitoring of counterparties and recommending changes to investment limits when appropriate.

The Investment Policy also identifies sources of funds that may be invested, and the permitted investments of those funds, including the authority required to make such investments and the parameters of, and limitations on, each type of investment. Finally, the Investment Policy defines the approval authority required to exceed established investment limits. As stated above, the activities and processes carried out pursuant to the Investment Policy, and the governance set forth therein, support the Clearing Agencies' compliance with the requirements of Rule 17Ad-22(e)(16).¹⁰

¹⁰ 17 CFR 240.17Ad-22(e)(16).

Proposed Revisions to the Investment Policy

The Investment Policy is reviewed and approved by the Boards annually. In connection with the most recent annual review of the Investment Policy, the Clearing Agencies have decided to propose certain revisions and updates. These proposed revisions, described in greater detail below, are designed to update the Investment Policy to reflect current practices and to help ensure that it continues to operate as intended.

(i) Proposed Change Regarding the Separation and Segregation of Funds

Section 3.2 of the Policy addresses the Clearing Agencies' approach to segregation of deposits to their respective Participants or Clearing Funds. The Policy currently states that deposits to the Participants Fund and Clearing Funds must not be commingled with each other or with general corporate funds of the Clearing Agencies. The Clearing Agencies' intention in using this approach is to ensure these funds are not commingled on the Clearing Agencies' books and records but is not intended to restrict the Clearing Agencies from depositing those amounts in the same deposit accounts, for example at their cash deposit accounts at the Federal Reserve Bank of New York ("FRBNY"). In short, the Clearing Agencies have subaccounts on their books and records to reflect the segregation of various funds, but each Clearing Agency only has one account at the FRBNY where Clearing Funds and Participant Fund are held with Clearing Agency general corporate funds.

For example, deposits to NSCC's Clearing Fund currently can be deposited into the same bank deposit account as NSCC's general corporate funds, so long as these amounts are separated on NSCC's books and records and are not deposited into the same bank account as the DTC Participant Fund or either of the FICC Clearing Funds.

Additionally, because GSD and MBSD are divisions of FICC, and FICC, like NSCC and

DTC, has only one cash deposit account at the FRBNY, the proposed change also makes clear that the GSD Clearing Fund and MBSD Clearing Fund may be commingled in the same bank deposit account so long as they are segregated on FICC's books and records. Lastly, the proposed change clarifies that the Clearing Agencies' approach to segregation of funds applies not only to the relationship between a Clearing Agency's general corporate funds and its Participants Fund or Clearing Fund but to all investable funds of a Clearing Agency.

Therefore, the Clearing Agencies are proposing to clarify that, although deposits to a Clearing Agencies' Participant Fund or Clearing Fund must be segregated on each respective Clearing Agency's books and records from each other and from their respective general corporate funds, these amounts may be deposited in the same bank deposit account as other investable funds of that Clearing Agency. The proposed clarification is consistent with the Clearing Agencies' existing practices and would not significantly affect the rights or obligations of the Clearing Agencies or their participants. This proposed change would clarify the Investment Policy and reflect the Clearing Agencies current practices regarding Clearing Agencies' separation and segregation of funds.

(ii) *Proposed Change to Clarify Roles and Responsibilities of CCR and Treasury*

Section 4 of the Policy outlines the roles and responsibilities of Treasury and CCR in conducting credit reviews and setting investment limits of counterparties. The proposed changes include clarification of these roles and responsibilities to improve the transparency of the Investment Policy to the DTCC staff who adhere to its provisions. The proposed changes to Section 4.2 would add the requirement that Treasury state the

intended type of investment relationship with a counterparty when it requests that CCR perform a credit review of an investment counterparty. The proposed changes would also clarify that the governance of an investment counterparty credit review depends on whether the proposed counterparty is a participant of a Clearing Agency. Counterparties that are not participants must be approved by a Managing Director of CCR and counterparties that are participants are reviewed using a risk-based criteria based on the participants' membership level.

An additional proposed change to Section 4.2 would remove the requirement that a Managing Director of GCRO approve counterparty investment limits. This proposed change would clarify that CCR is responsible for setting the aggregate investment limits assigned to a counterparty in connection with the credit reviews for that counterparty.

In addition, the Clearing Agencies are proposing changes to Section 4.2 to specify the management of the quarterly credit reviews and changes to counterparty investment limits. The Policy currently states that CCR will notify Treasury if an investment counterparty's external credit rating is downgraded, if CCR believes an investment counterparty's investment limit should change, or if an investment transaction should be terminated. The purpose of this procedure is to quickly capture any changes to an investment counterparty's credit rating that may affect the Clearing Agencies' exposure to such counterparty and, therefore, require change to the allowable investment limit applicable to that counterparty under the Policy. The proposed changes to this Section would clarify that CCR only notifies Treasury if an investment counterparty's external credit ratings fall below the minimum ratings in the Policy or requires a change to that counterparties' investment limit. The proposed changes would also clarify that CCR may

advise Treasury if it is appropriate to set a counterparty's investment limit lower than the investment limits provided within the Policy or to terminate an investment transaction. These proposed changes would clarify that either of these investment limit changes require approval by a Managing Director of GCRO.

The proposed changes are consistent with the Clearing Agencies' existing practices and would not significantly affect the rights or obligations of the Clearing Agencies or their participants.

(iii) *Proposed Change to Update Allowable Investments and Investment Limits*

The Clearing Agencies are proposing to amend the table of allowable investments in Section 6 of the Policy to reflect their current investment practice of only investing the Clearing Funds of NSCC and FICC; NSCC's Fully Paid-For Account, DTC Short Position Cash, Corporate Actions Payments and Principal & Interest Payments; and GSD Forward Margin in bank deposits. The table identifies the sources of investable funds that are invested by the Clearing Agencies, and groups these sources of funds into separate categories. The Policy currently permits the Clearing Agencies to invest the investable funds listed above in multiple types of investment vehicles, for example reverse repurchase agreements. The Clearing Agencies believe that it is prudent investment practice to limit the investment of these funds to only bank deposits and have, in practice, already limited such investments accordingly. The proposed changes to this table would also delete footnotes that include information that is no longer necessary given this change in investment practice.

Two proposed changes to Section 6.2.1 of the Policy would conform the Investment Policy to current practice. First, this section currently states that the DTC Participant Fund may only be invested in demand deposit, savings or checking accounts

that provide same day access to funds. The Clearing Agencies would update this section to make clear that these criteria also applies to investment of the NSCC and FICC Clearing Funds. Finally, the proposed changes would include adding “unless an exception has been granted pursuant to Section 4.2 of this Policy” following the requirement for approved bank counterparty minimum external credit ratings, for clarification purposes in terms of the interplay of the various sections in the Policy.

(iv) *Proposed Change to Include Approvals Required for Longer Term Transactions*

The Clearing Agencies are proposing to amend the Policy to describe the approval requirements for investments in bank deposits and reverse repurchase agreements with a term maturity longer than overnight. The Policy is currently silent as to the approval process for these longer-term transactions. The proposed changes would describe the requirement that CCR approve such longer-term transactions and would align the parameters around establishing investment limits for such transactions to the guidelines provided in Section 6.2.1 of the Policy, for longer term bank deposit investments, and Section 6.2.2, for reverse repurchase agreements, unless an exception has been granted pursuant to Section 4.2 of the Policy.

The proposed changes would also describe the requirement that CCR assess the creditworthiness of a counterparty when determining term to maturity for such longer-term transactions requested by Treasury. These proposed changes would improve the Investment Policy by clearly describing the approval process for these types of investments.

(v) *Proposed Change to Remove Reference to Hedge Transactions*

The proposed changes would remove references to the Clearing Agencies' process involving hedge transactions from the Policy. Section 6.2.6 of the Policy currently describes allowable hedge transactions, limitations on hedge transaction maturity dates and value amounts, and the approval process for hedge transactions. The proposed changes would remove this section from the Policy because hedging activity is different from investment activity. Additionally, hedging activity is conducted using only general corporate funds of the Clearing Agencies, thereby posing very little risk to the Clearing Agencies' Clearing Fund or Participant Fund. Therefore, the Clearing Agencies believe it is appropriate to establish a stand-alone internal hedging policy reflecting the processes, procedures and philosophy regarding hedge transactions that is currently captured in this Investment Policy. Such internal hedging policy would provide greater detail and clarity related to the current hedging practices of the Clearing Agency. Further, the proposed removal of references to hedging activity would improve the Investment Policy in clarifying and focusing its purpose.

(vi) *Proposed Change to Make Technical Corrections and Revisions*

Finally, the proposed changes would make technical corrections to statements in the Investment Policy, delete irrelevant processes, and add clarifying words or sentences throughout the Policy. These changes are 1) change the word "Subject" to "Pursuant" in the footnote to the table in Section 5 and delete the second footnote, 2) change the heading of subparagraph 6.2.4 from *Reverse Repurchase Agreements (Reverse Repos)* to *Money Market Mutual Funds (MMMFs)* as the content of the subparagraph discusses MMMFs instead of Reverse Repos, 3) change the word "percent" as it relates to a counterparty's shareholders' equity capital in Section 6.2.1 to "multiple" for consistency

with the use of the word multiple in the corresponding table, 4) remove reference to Hold-in custody Reverse Repos in Section 6.2.2 as the Clearing Agencies do not engage in such transactions, 5) change numeric representations in the table in 6.2.1 for consistency throughout the Policy, 6) delete any footnotes made inaccurate or unnecessary by the other proposed changes to the Policy, and 7) add the word “amount” in front of the words “by 30%” in Section 7.1 for clarification purposes. These changes are not substantive changes to the Clearing Agencies’ investment practices.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency.¹¹ In particular, the Clearing Agencies believe that the proposed modifications to the Investment Policy are consistent with Section 17A(b)(3)(F) of the Act¹² and Rule 17Ad22(e)(16) under the Act,¹³ 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 assure the safeguarding of securities and funds that are in the custody or control of each of the Clearing Agencies or for which they are responsible.¹⁴ The investment guidelines and governance procedures set forth in the Investment Policy are designed to safeguard funds that are in the custody or control of the Clearing Agencies or for which they are responsible. Such protections include, for example,

¹¹ 17 CFR 240.17Ad-22(e)(16).

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 17 CFR 240.17Ad-22(e)(16).

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

following a prudent and conservative investment philosophy that places the highest priority on maximizing liquidity and risk avoidance. The Clearing Agencies believe the proposed change to reflect the Clearing Agencies' current investment practice to only invest NSCC and FICC Clearing Funds, Fully Paid-For Account, Short Position Cash, Corporate Actions Payments, Principal & Interest Payments, and GSD Forward Margin in bank deposits would allow it to adhere to these guidelines by maximizing liquidity and minimizing the risk posed by other, potentially longer term, investments. Therefore, the Clearing Agencies believe the proposed change would allow the Clearing Agencies to continue to invest pursuant to the Investment Policy in a prudent and conservative manner that assures the safeguarding of securities and funds that are in their custody and control, or for which they are responsible.

Section 17A(b)(3)(F) of the Act also requires, in part, that the rules of the Clearing Agencies be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.¹⁵ The proposed changes to (1) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Funds; (2) clarify roles and responsibilities related to credit reviews and setting investment limits; (3) remove descriptions of hedge transactions; and (4) make technical corrections and revisions to clarify and simplify statements in the Investment Policy would help clarify the administration of the procedures outlined in the Policy and therefore aid in the cooperation and coordination between the DTCC staff who adhere to its provisions.

¹⁵ Id.

Additionally, the proposed change to provide approval requirements for investments in bank deposits and reverse repurchase agreements with a term maturity longer than overnight would improve the effectiveness of the Investment Policy and allow the Clearing Agencies to administer the Investment Policy in alignment with the investment guidelines and governance procedures set forth therein. Specifically, the Investment Policy sets forth guiding principles for the investment of funds, which include adherence to a prudent and conservative investment philosophy that places the highest priority on maximizing liquidity and avoiding risk. The guiding principles of the Investment Policy also address the process for evaluating the credit ratings of counterparties and setting investment limits. Given that such guidelines and governance procedures are designed to safeguard funds that are in the custody or control of the Clearing Agencies or for which they are responsible, the Clearing Agencies believe the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.¹⁶

Rule 17Ad-22(e)(16) under the Act requires, in part, the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to safeguard the Clearing Agencies' own and their participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.¹⁷ The Clearing Agencies believe that the Investment Policy, as amended by the proposed changes, follows a prudent and conservative investment philosophy, placing the highest priority on

¹⁶ Id.

¹⁷ 17 CFR 240.17Ad-22(e)(16).

maximizing liquidity and avoiding risk of loss, by setting appropriate investment practices and creating clear guidelines. As originally implemented, the Investment Policy was designed to meet the requirements of Rule 17Ad-22(e)(16) under the Act.¹⁸

For the reasons stated above, the Clearing Agencies believe that the proposed revisions to (1) clarify obligations regarding the separation and segregation of funds deposited to a Clearing Agency's Participants Fund or Clearing Funds; (2) update allowable investments for the Clearing Agencies' respective Clearing Funds and other investable funds; and (3) include approvals required for longer term bank deposits and reverse repo investments would both strengthen the risk management objectives of the Investment Policy and improve the clarity of the Policy and, therefore, make the Investment Policy more effective in governing the management, custody, and investment of funds of and held by the Clearing Agencies. In this way, these proposed changes would better allow the Clearing Agencies to maintain this document in a way that is designed to meet the requirements of Rule 17Ad-22(e)(16).¹⁹ Therefore, the Clearing Agencies believe these proposed revisions would be consistent with the requirements of Rule 17Ad-22(e)(16) under the Act.²⁰

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

Each of the Clearing Agencies believes that none of the proposed revisions to the Investment Policy would have any impact, or impose any burden, on competition. The Investment Policy applies equally to the allowable investments of the Clearing Agencies,

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

including the FICC and NSCC Clearing Funds and DTC Participants Fund deposits, and establishes a uniform policy at the Clearing Agencies. The proposed changes to the Investment Policy would not affect any changes on the fundamental purpose or operation of this document 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

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submitcomments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

NSCC reserve the right not to respond to any comments received.

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)²¹ of the Act and paragraph (f)²² of Rule 19b-4 thereunder. 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-NSCC-2023-005 on the subject line.

Paper Comments:

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

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-NSCC-2023-005. This file number 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 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 NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject

to copyright protection. All submissions should refer to File Number SR-NSCC-2023-005 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.²³

Sherry R. Haywood
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).