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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91291; File No. SR-DTC-2021-002]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change to Revise the Clearing Agency Investment Policy

March 10, 2021

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 March 8, 2021, 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. 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 would revise the Clearing Agency Investment Policy (“Investment Policy”) of The Depository Trust Company (“DTC”) and its affiliates, National Securities Clearing Corporation (“NSCC”) and Fixed Income Clearing Corporation (“FICC,” and together with DTC and NSCC, the “Clearing Agencies”) in order to (1) enhance the methodology for determining investment limits for investments

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in bank deposits, and (2) clarify the description of certain investable funds of the Government Securities Division of FICC (“GSD”), 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 Investment Policy, which was adopted for each clearing agency in December 2016³ and is maintained in compliance with Rule 17Ad-22(e)(16) under the Act,⁴ in order to (1) enhance the methodology for determining investment limits for investments in bank deposits, and (2) clarify the description of certain investable funds of GSD, as described in greater detail below.

³ 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).

⁴ 17 CFR 240.17Ad-22(e)(16). As discussed in this filing, the Investment Policy also addresses compliance with the requirements of Rule 17Ad-22(e)(3). 17 CFR 240.17Ad-22(e)(3).

Overview of the Investment Policy

The Investment Policy governs the management, custody and investment of cash deposited to the respective NSCC and FICC Clearing Funds, and the DTC Participants Fund,⁵ the proprietary liquid net assets (cash and cash equivalents) of the Clearing 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")⁶ and the Counterparty Credit Risk team ("CCR") within DTCC's Group Chief Risk Office ("GCRO").⁷ Treasury is responsible for identifying potential counterparties to investment transactions, establishing and managing investment relationships with approved investment counterparties, and making and monitoring all

⁵ The respective Clearing Funds of NSCC and FICC, and the DTC Participants Fund are described further 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.

⁶ Treasury is a part of the DTCC Finance Department and is responsible for the safeguarding, investment and disbursement of funds on behalf of the Clearing Agencies and in accordance with the principles outlined in the Investment Policy.

⁷ Among other responsibilities, GCRO is generally responsible for the systems and processes designed to identify and manage credit, market and liquidity risks to the Clearing Agencies.

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.

Allowable investments include bank deposits, reverse repurchase agreements, direct obligations of the U.S. government, money market mutual funds, high-grade corporate debt, and hedge transactions. Finally, the Investment Policy defines the approval authority required to exceed established investment limits.

The Investment Policy is reviewed and approved by the Boards annually. In connection with a recent annual review of the Investment Policy, the Clearing Agencies have decided to propose revisions to the Investment Policy in order to (1) enhance the methodology for determining investment limits for investments in bank deposits, and (2) clarify the description of certain investable funds of GSD, as described in greater detail below.

Proposed Enhancement to the Formula for Setting Bank Deposit Investment Limits

Section 6.2.1 of the Investment Policy sets forth the investment limits applicable to bank deposit investments. Currently, bank deposit investment limits are determined based on the bank counterparty's external credit rating. For example, investments in a bank deposits with a bank counterparty with an external credit rating of AAA or Aaa are

limited to no more than \$750 million, and an investment with a bank counterparty with an external credit rating of BBB+ or Baa1 are limited to no more than \$100 million.

The Clearing Agencies are proposing to enhance the methodology for setting investment limits and investment caps on bank deposits with a particular counterparty by including a consideration of the size of the bank counterparty, measured as the total shareholders' equity capital, in this calculation. Under the proposed methodology, an investment limit for a bank deposit counterparty would continue to be based on the counterparty's credit rating, but would be the lower of (1) a percentage of its total shareholders' equity capital, and (2) the applicable dollar value that is currently in Section 6.2.1 of the Investment Policy. For example, investments in a bank deposits with a bank counterparty with an external credit rating of AAA or Aaa and total shareholders' equity capital of \$9 billion would be limited to no more than \$750 million, however, investments with a bank counterparty with the same external credit rating and total shareholders' equity capital of \$2 billion would be limited to no more than \$300 million.

The proposed approach would permit the Clearing Agencies to take into account the size of a counterparty in setting investment limits rather than apply the same investment limits to each counterparty with the same credit rating without regard to the entity's size. The proposal is designed to mitigate the Clearing Agencies' risk exposure to smaller bank counterparties.

Proposed Revisions to the Description of Investable Funds of GSD

The Clearing Agencies are also proposing to amend Section 5 of the Investment Policy to revise the description of investable funds of GSD, which are currently described as "GSD Forward Margin." The proposed changes would refer to these funds as "GSD

Forward Mark Adjustment Payment,” which is the term used in the GSD Rules to refer to these funds.⁸ The proposed change to clarify the term used to describe these funds would prevent any confusion about which funds are included in Section 5 and invested pursuant to the Policy.

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. In particular, the Clearing Agencies believe that the proposed modifications to the Investment Policy are consistent with Section 17A(b)(3)(F) of the Act⁹ and Rule 17Ad-22(e)(16) under the Act,¹⁰ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of each 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.¹¹ 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, 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 consider the size of a bank counterparty in setting its bank

⁸ See Rule 1 (Definitions) of the GSD Rules. Supra note 5.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 240.17Ad-22(e)(16).

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

deposit investment limits would allow it to adhere to these guidelines by minimizing the risk posed by smaller counterparties, measured by their shareholders' equity capital. Therefore, the Clearing Agencies believe the proposed change would allow the Clearing Agencies to continue to operate the Investment Policy pursuant to a prudent and conservative investment philosophy that assures the safeguarding of securities and funds that are in their custody and control, or for which they are responsible.

Additionally, the proposed change to align the description of investable funds of GSD with the description of these funds in the GSD Rules would clarify the funds that are subject to the Policy and, thereby, improve the effectiveness of the Investment Policy and allow the Investment Policy to continue to be administered in alignment with the investment guidelines and governance procedures set forth therein. 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.¹²

Rule 17Ad-22(e)(16) under the Act requires 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.¹³ The Clearing Agencies believe that the

¹² Id.

¹³ When the Investment Policy was implemented, the Clearing Agencies were subject to the requirements of subsection (d) of Rule 17Ad-22 and the Investment Policy was designed to meet the requirements of Rule 17Ad-22(d)(3). See supra note 3; 17 CFR 240.17Ad-22(d). The Commission subsequently adopted Rule

Investment Policy follows a prudent and conservative investment philosophy, placing the highest priority on maximizing liquidity and avoiding risk of loss, by setting appropriate investment limits 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.¹⁴

For the reasons stated above, the Clearing Agencies believe that the proposed revisions 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, the 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). Therefore, the Clearing Agencies believe the proposed revisions would be consistent with the requirements of Rule 17Ad-22(e)(16) under the Act.¹⁵

(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 allowable investments of Clearing Fund and Participants Fund deposits, as applicable, of each member of the Clearing Agencies, and

17Ad-22(e) and amended Rule 17Ad-22(d) such that the Clearing Agencies became subject to the new requirements of Rule 17Ad-22(e) and are no longer subject to the requirements of Rule 17Ad-22(d). Id.

¹⁴ 17 CFR 240.17Ad-22(e)(16).

¹⁵ Id.

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

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2021-002 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-2021-002. 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 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-2021-002 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,

Assistant Secretary.

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¹⁶ 17 CFR 200.30-3(a)(12).