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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74142; File Nos. SR-FICC-2014-810; SR-NSCC-2014-811; SR-DTC-2014-812)

January 27, 2015

Self-Regulatory Organizations; Fixed Income Clearing Corporation; National Securities Clearing Corporation; The Depository Trust Company; Notice of No Objection to Advance Notices, as Amended, to Amend and Restate the Third Amended and Restated Shareholders Agreement, Dated as of December 7, 2005

On November 5, 2014, Fixed Income Clearing Corporation (“FICC”), National Securities Clearing Corporation (“NSCC”), and The Depository Trust Company (“DTC,” together with FICC and NSCC, “Clearing Agencies”) filed with the Securities and Exchange Commission (“Commission”) advance notices SR-FICC-2014-810, SR-NSCC-2014-811 and SR-DTC-2014-812 (“Advance Notices”), pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)¹ and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934.² On November 17, 2014, the Clearing Agencies each filed Amendments No. 1 to the Advance Notices.³ On November 17, 2014 FICC withdrew Amendment No. 1 and filed Amendment No. 2 to advance notice SR-FICC-2014-810.⁴ The Advance Notices, as

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ NSCC and DTC filed Amendment Nos. 1 to provide additional description of the changes proposed in advance notices SR-NSCC-2014-811 and SR-DTC-2014-812, respectively.

⁴ FICC withdrew Amendment No. 1 to advance notice SR-FICC-2014-810 due to an error in filing the amendment. FICC filed Amendment No. 2 to advance notice SR-FICC-2014-810 in order to provide additional description of the changes proposed in the advance notice.

amended, were published for comment in the Federal Register on December 11, 2014.⁵ On December 31, 2014, the Commission published notice of its extension of the review period for the Advance Notices.⁶ The Commission did not receive any comments on the Advance Notices. This publication serves as notice of no objection to the Advance Notices, as amended.

I. Description of the Advance Notices

The Advance Notices are a proposal by the Clearing Agencies, which are wholly owned subsidiaries of the Depository Trust and Clearing Corporation (“DTCC”), to amend and restate their Third Amended and Restated Shareholders Agreement, dated as of December 7, 2005 (“Existing Shareholders Agreement”)⁷ — a single agreement covering all of the Clearing Agencies and their respective members and participants (“Members”). The Clearing Agencies state that the proposed revisions to the Existing Shareholders Agreement (“Revised Shareholders Agreement”) are the product of a comprehensive review by DTCC of its ownership, governance, and capital structure, undertaken for the purposes of increasing the financial resources available to support the conduct of the businesses of the Clearing Agencies and enhancing regulatory risk management.

With the Advance Notices of the Revised Shareholders Agreement, the Clearing Agencies propose: (1) to issue new common stock of DTCC (“Common Shares”), which

⁵ Release No. 34-73755 (Dec. 5, 2014), 79 FR 73665 (Dec. 11, 2014).

⁶ Release No. 34-73975 (Dec. 31, 2014), 80 FR 918 (Jan. 7, 2015).

⁷ When the changes proposed in the Advance Notices become effective, the title of the Existing Shareholders Agreement will become the “Fourth Amended and Restated Shareholders Agreement.”

mandatory common shareholders (“Mandatory Shareholders”)⁸ will be required to purchase, upon approval by the DTCC Board of Directors (“Board”) and two-thirds of Mandatory Shareholders; (2) to buyback such newly issued Common Shares from Mandatory Shareholders, at the Board’s discretion and approval; (3) to modify the formula for allocating Common Shares among shareholders (“Common Shareholders”); (4) to modify the formula for pricing the Common Shares; (5) to remove restrictions on the frequency with which DTCC can reallocate Common Shares; and (6) make other conforming and technical changes. Details of these proposed changes are summarized below.

A. Capital Raise through the Sale of Newly Issued Common Shares to Mandatory Shareholders

Historically, the Clearing Agencies have operated on an at-cost or near-cost basis and rebated excess revenues to Members. Recently, however, the Clearing Agencies have experienced a greater need to increase capital to meet higher operating costs and, as systemically important financial market utilities (“SIFMUs”), to satisfy heightened risk-management requirements.

In order to raise capital for business purposes, the Revised Shareholders Agreement will enable DTCC to sell newly issued Common Shares to Mandatory Shareholders, who will be required to purchase such shares. The exercise of this new authority will require approval by the Board and two-thirds of the Mandatory

⁸ Pursuant to the Existing Shareholders Agreement and the rules of each of the Clearing Agencies, some Members, generally full-service Members, are required to own Common Shares (i.e., Mandatory Shareholders) while other Members, generally limited-service Members, are permitted but not required to own such shares (“Voluntary Shareholders”). Further, certain Members are not permitted to purchase and own Common Shares or become parties to the Existing Shareholders Agreement.

Shareholders. The proceeds of the sale of the new issuance will be provided by DTCC to the Clearing Agencies as working capital. Voluntary Shareholders will not be required or permitted to purchase newly issued Common Shares.

DTCC states that it has performed extensive analyses to determine these needs and has considered alternative means to address them. DTCC deemed an increase in fees impractical because it would not necessarily generate sufficient resources in a reasonable period and fees depend on transactional volumes, which may be volatile. DTCC also was concerned with the financial burden that significant fee increases could place on Members over an extended period.

B. Mandatory Repurchase of Newly Issued Common Shares from Mandatory Shareholders

To allow flexibility to return capital to Mandatory Shareholders if the Clearing Agencies have excess, the Revised Shareholders Agreement will provide a mechanism under which DTCC may repurchase Common Shares from Mandatory Shareholders, on a mandatory basis, in an aggregate amount up to the aggregate amount of all newly issued Common Shares. Exercise of this new authority will be at the discretion of the Board.⁹

C. Updates to the Common Share Allocation Formula

The formula used to periodically reallocate entitlements to purchase Common Shares (“Allocation Formula”) is based on the historic development of DTCC.¹⁰ The Allocation Formula provides that (i) 80% of the entitlement to purchase Common Shares is based on the amount of fees paid by a Member to the Clearing Agencies, and (ii) the

⁹ The directors of the boards of FICC, NSCC, and DTC are the same as the Board’s directors.

¹⁰ See Release No. 34-73755 (Dec. 5, 2014), 79 FR 73665, 73667 (Dec. 11, 2014).

remaining 20% of the entitlement is based on the average market value of all securities credited to the DTC account of that Member (“Long Positions”).

Today, all users of the Clearing Agencies pay fees to one or more of the Clearing Agencies based on usage of the services and facilities of the Clearing Agencies, including fees for Long Positions. Accordingly, DTCC has determined that it is no longer appropriate for the Allocation Formula to include both the market value of Long Positions and fees paid to DTC for such Long Positions. As such, the Revised Shareholders Agreement will update the Allocation Formula to eliminate the market value of Long Positions, so that the formula will be based solely on fees paid to the Clearing Agencies.

D. Amendments to the Common Share Price Formula

The price of Common Shares is used in connection with the purchase and sale of such shares among Common Shareholders in the periodic reallocation of Common Shares, as well as in connection with the transfer of the Common Shares of retiring or disqualified Common Shareholders.

Under the Existing Shareholders Agreement, the price of Common Shares is determined by a formula (“Pricing Formula”) that excludes a portion of the retained earnings of the Clearing Agencies from DTCC’s book value, which DTCC argues is a vestige of the historical development of DTCC.¹¹ Additionally, the basis of the Pricing Formula is the full book value of DTCC, which includes intangibles such as goodwill.¹²

¹¹ See id.

¹² Intangible items of book value used in this calculation are shown on DTCC’s Consolidated Statement of Financial Condition. DTCC Financial Statements, available at <http://dtcc.com/legal/financial-statements.aspx>.

To make the price of the Common Shares more closely reflect the liquidation value of DTCC, the Revised Shareholders Agreement will make two amendments to the Pricing Formula. First, the formula will be updated to no longer exclude a portion of the retained earnings of the Clearing Agencies from DTCC's book value. Second, the formula will be updated to reflect the tangible book value of DTCC and the liquidation preference of the preferred stock of DTCC.

E. Amendments to the Frequency of Reallocating Common Shares

The reallocation of Common Shares among Common Shareholders is a means of aligning the entitlement to own such shares with the use of the Clearing Agencies by the Common Shareholders. The Existing Shareholders Agreement limits reallocations to no more than once a year, but no less than every three years.

To allow more frequent reallocations, the Revised Shareholders Agreement will permit reallocations to occur more than once a year, as determined by the Board, but still no less than once every three years.

F. Other Conforming and Technical Amendments to the Existing Shareholders Agreement

The Revised Shareholders Agreement will also include certain other technical amendments, including conforming and clarifying changes. For example, the Revised Shareholders Agreement will: (i) amend the definition of "Common Share Amount" to clarify that the calculation does not include any fees that are pass-through fees (i.e., amounts collected by one of the Clearing Agencies for the account of a third party and paid by that Clearing Agency to a third party); (ii) amend the definition of "Settlement" to move the time at which settlement is effected from 5:00 p.m. New York City Time on the Settlement Date, as such terms are defined in the Existing Shareholders Agreement,

to 4:00 p.m. New York City Time on the Settlement Date;¹³ (iii) update the definition of “Deliver” to include more convenient and contemporary methods of delivering notices, (e.g., by electronic mail), as appropriate; and (iv) include Members of FICC’s Mortgage-Backed Security Division (“MBSD”), other than Cash-Settling Bank Members (as such term is defined in the rules of MBSD),¹⁴ within the definition of “Mandatory Purchaser Participants.”

The Revised Shareholders Agreement also will amend the definition of “Qualified Person,” which sets forth the types of entities that may hold Common Shares, to exclude: (i) Federal Reserve Banks because DTCC never intended that such governmental authorities should be required to own shares in DTCC, notwithstanding that they may use certain services of the Clearing Agencies; (ii) central counterparties or central securities depositories because these link arrangements are for the purpose of extending clearing agency services across borders, or among closely related activities and products, but not for ownership purposes; and (iii) any other financial market infrastructure or utility that the Board determines shall not be a Qualified Person.

Finally, the Revised Shareholders Agreement will provide that the pro-rata re-distribution of the Common Shares of a Common Shareholder that is no longer a Qualified Person to all other Common Shareholders takes place at the beginning of the

¹³ This is an operational change in order to align Common Share settlement times with the routine times of end of day settlement for each of the Clearing Agencies.

¹⁴ MBSD Rules & Procedures, available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf. As a result of FICC becoming a central counterparty for transactions processed and cleared at MBSD, Release No. 34-66550 (Mar. 9, 2012), 77 FR 15155 (Mar. 14, 2012), the general rule that full-service Members, including users of guaranteed services, of one of the Clearing Agencies are Mandatory Purchaser Participants applies to Members of MBSD.

following calendar year, rather than contemporaneously with such Common Shareholder ceasing to be a Qualified Person. This change reflects current practice and is more administratively practical.

II. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the Commission believes that the stated purpose of the Clearing Supervision Act is instructive.¹⁵ The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.¹⁶

Section 805(a)(2) of the Clearing Supervision Act¹⁷ authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act¹⁸ states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;

¹⁵ See 12 U.S.C. 5461(b).

¹⁶ Id.

¹⁷ 12 U.S.C. 5464(a)(2).

¹⁸ 12 U.S.C. 5464(b).

- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act¹⁹ (“Clearing Agency Standards”).²⁰ The Clearing Agency Standards became effective on January 2, 2013, and require registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis. As such, it is appropriate for the Commission to review advance notices against these Clearing Agency Standards and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.²¹ The Commission believes that the proposed changes to the Existing Shareholders Agreement promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system, and, thus, align with the stated purpose of the Clearing Supervision Act.

First, allowing DTCC to issue new Common Shares to Mandatory Shareholders for the purpose of infusing the Clearing Agencies with additional working capital will enable the Clearing Agencies, which are designated SIFMUs, to maintain operations for a longer period during times of financial stress. As such, the proposed change promotes

¹⁹ 12 U.S.C. 5464(a)(2).

²⁰ Rule 17Ad-22, 17 CFR 240.17Ad-22. Release No. 34-68080 (Oct. 22, 2012), 77 FR 66220 (Nov. 2, 2012).

²¹ 12 U.S.C. 5464(b).

the safety and soundness of the Clearing Agencies, reduces systemic risks presented by the Clearing Agencies, and supports the stability of the broader financial system.

Second, allowing DTCC to buy back newly issued Common Shares from Mandatory Shareholders will enable DTCC to return capital to those Members, most of which play substantial roles in the financial system, when the Clearing Agencies have excess capital. Therefore, the proposed change further supports the stability of the broader financial system by enabling capital to move from the Clearing Agencies back to Members when appropriate.

Third, the proposal to update the Allocation Formula to no longer account for securities held at DTC will more closely align the allocation of Common Shares with Common Shareholder's use of the Clearing Agencies. Therefore, ownership of the Clearing Agencies will more accurately reflect usage of the Clearing Agencies, which should further align risks and promote robust management at the Clearing Agencies.

Fourth, the proposal to update the Pricing Formula to (i) no longer exclude a portion of the retained earnings of the Clearing Agencies, and (ii) change the basis of the formula from DTCC's book value to its tangible book value will more accurately reflect the actual liquidation value of DTCC. By more accurately reflecting the liquidation value of DTCC, shareholders can more accurately account for the value of their shares and payments that they may make or receive in a future reallocation of Common Shares. Thus, the Mandatory and Voluntary Shareholders can better assess their financial position, promoting stability of the broader financial system.

Fifth, the proposal to allow for more than one reallocation of Common Shares among Common Shareholders per year will enable DTCC to contemporaneously align

ownership of Common Shares with Common Shareholders' usage of the Clearing Agencies as needed. Similar to the proposed change to the Allocation Formula, discussed above, the ability to allocate Common Shares more often helps ensure that ownership of the Clearing Agencies more accurately reflects use of the Clearing Agencies, which should further promote robust risk management at the Clearing Agencies.

Sixth, the technical and conforming changes to the Shareholders Agreement will make the Shareholders Agreement more consistent, current, and clear, which promotes a more safe and sound execution of the agreement by DTCC and its applicable Members.

Conclusion

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,²² that the Commission DOES NOT OBJECT to advance notices SR-FICC-2014-810, SR-NSCC-2014-811, and SR-DTC-2014-812, as amended, and that FICC, NSCC, and DTC be and hereby are AUTHORIZED to implement the changes contained in their respective advance notices as of the date of this notice.

By the Commission.

Brent J. Fields
Secretary

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²² 12 U.S.C. 5465(e)(1)(I).