SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96555; File Nos. SR–DTC–2022–011; SR–FICC–2022–008; SR–NSCC–2022–013]

Self-Regulatory Organizations; The Depository Trust Company; Fixed Income Clearing Corporation; National Securities Corporation; Order Granting Proposed Rule Changes To Amend Liquidity Risk Management Framework To Include a New Section Describing the Process by Which FICC Would Designate Uncommitted Resources as Qualifying Liquid Resources and Make Other Changes

December 20, 2022.

On October 20, 2022, The Depository Trust Company (''DTC''), Fixed Income Clearing Corporation (''FICC''), and National Securities Clearing Corporation (''NSCC'') (each a ''Clearing Agency,'' and collectively, the ''Clearing Agencies''), filed with the Securities and Exchange Commission (''Commission'') proposed rule changes SR–DTC–2022–011, SR–FICC–2022–008, and SR–NSCC–2022–013 (the ''Proposed Rule Changes'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder [2] to Amend the Clearing Agencies Liquidity Risk Management Framework adopted by the Clearing Agencies. The Proposed Rule Changes were published for comment in the **Federal Register**,[3] and the Commission has received no comments on the changes proposed therein. This order approves the Proposed Rule Changes.

I. Description of the Proposed Rule Changes

A. Background

The Clearing Agencies adopted the Liquidity Risk Management Framework (''Framework'') to set forth the manner in which they measure, monitor and manage the liquidity risks that arise in or are borne by each of the Clearing Agencies, including (i) the manner in which each Clearing Agency deploys their respective liquidity tools to meet its settlement obligations on an ongoing and timely basis, and (ii) each applicable Clearing Agency's use of intraday liquidity.[4]

B. Process by Which FICC Could Designate Uncommitted Liquidity Resources as QLR

The proposed changes to the Framework [5] would add a new section describing the process by which FICC could designate uncommitted liquidity resources as qualifying liquid resources (''QLR'').[6] FICC states that, at this time, it does not have uncommitted liquidity resources designated as QLR; [7] however, the proposed new section would allow FICC to have such QLR to the extent the requirements of Rule 17Ad–22(a)(14)(ii)(B) are followed.[8]

The proposed new section would provide that, in order to designate an uncommitted liquidity resource as a QLR, FICC would identify the properties of each financing arrangement, including the underlying collateral and the liquidity providers, determine the rigorous analysis that would be appropriate based on the nature of that liquidity resource, and conduct that analysis at least annually. The components and results of that analysis would be presented to the Board Risk Committee at least annually. When considering whether to designate the uncommitted resource as a QLR, the Board Risk Committee would determine if the uncommitted liquid resource is highly reliable under extreme but plausible market conditions consistent with Rule 17Ad-22(a)(14)(ii)(B) under the Act.[9]

C. Liquidity Resources That Are Not Designated as QLR

The proposed changes to the Framework would also clarify that FICC may have access to liquidity resources that are not designated as QLR. FICC states that it maintains uncommitted master repurchase agreements (''MRAs'') that can be utilized to finance via the repo market the securities in FICC's Clearing Funds and those purchased on behalf of a defaulting Member to raise funds.[10] According to FICC, the MRAs may be utilized as liquidity resources in the event of a Member default, even though they are not designated as QLR.[11] The proposed rule change provides that, on a weekly basis, FICC would perform a study to estimate the depth of the repo market under prevailing market conditions as well as a sample stress scenario to assess potential available liquidity in the event of default of the largest Member. Moreover, at least annually, FICC would conduct counterparty due diligence reviews that would assess each non-QLR liquidity provider's ability to provide liquidity to FICC under current market conditions and would provide a summary of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 96211 (Nov. 2, 2022), 87 FR 67527 (Nov. 8, 2022) (File No. SR–DTC–2022–011) (''DTC Notice''); Securities Exchange Act Release No. 96210 (Nov. 2, 2022), 87 FR 67516 (Nov. 8, 2022) (File No. SR–FICC–2022–008) (''FICC Notice''); Securities Exchange Act Release No. 96219 (Nov. 3, 2022), 87 FR 67721 (Nov. 9, 2022) (File No. SR–NSCC–2022–013) (''NSCC Notice'').

[4] *See* Securities Exchange Act Release No. 82377 (Dec. 21, 2017), 82 FR 61617 (Dec. 28, 2017) (SR–DTC–2017–004; SR–NSCC–2017–005; SR–FICC–2017–008).

[5] In addition to the proposed changes to the Framework, submitted as confidential Exhibit 5 to these Proposed Rule Changes, the Clearing Agencies submitted excerpts from their Liquidity Risk Management Procedures, submitted as confidential Exhibit 3 to these Proposed Rule Changes. The Clearing Agencies requested confidential treatment of Exhibits 3 and 5 pursuant to 17 CFR 240.24b–2.

[6] The Framework defines QLR consistent with the definition set forth in the Commission's rules. *See* 17 CFR 240.17Ad-22(a)(14). Rule 17Ad-22(a)(14) defines qualifying liquid resources to include, among other things, assets that are readily available and convertible into cash through prearranged funding arrangements, such as prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually. *Id.*

[7] *See* FICC Notice, *supra* note 3, 87 FR at 67516. FICC further states that, consistent with its existing processes, FICC would consider whether any uncommitted liquidity resources, including those that are designated as QLR, would require a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act, and the rules thereunder, or an advance notice with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010, and the rules thereunder. *See id.;* 15 U.S.C. 78s(b)(1); 12 U.S.C. 5465(e)(1).

[8] *See* FICC Notice, *supra* note 3, 87 FR at 67516; 17 CFR 240.17Ad–22(a)(14)(ii)(B).

[9] 17 CFR 240.17Ad-22(a)(14)(ii)(B). According to FICC, examples of the type of information that the Board Risk Committee could rely on in order to determine whether it would be appropriate to designate the proposed uncommitted resource as a QLR would include whether (i) FICC has identified securities that may be pledged pursuant to the proposed financing arrangement and that such securities are reasonably likely to be readily available for pledging and acceptable as collateral; (ii) FICC has reviewed the terms of the proposed financing arrangement to confirm such terms are current, appropriate and not expected to restrict FICC's use of the proposed financing arrangement; (iii) FICC has completed due diligence of each liquidity provider as required by Rule 17Ad-22(e)(7)(iv) under the Act; and (iv) FICC has developed procedures to test the proposed financing arrangement at least annually to confirm the liquidity providers are operationally able to perform their commitments and are familiar with the drawdown process, consistent with the requirements of Rule 17Ad-22(e)(7)(v) under the Act. *See* FICC Notice, *supra* note 3, 87 FR at 67517, n. 12; 17 CFR 240.17Ad-22(e)(7)(iv) and (v). In addition, FICC would include in the analysis presented to the Board Risk Committee recommendations and analyses of an independent third party that the proposed resource is highly reliable in extreme but plausible market conditions. *See* FICC Notice, *supra* note 3, 87 FR at 67517, n. 12. The Commission's review of the underlying procedures submitted as confidential exhibits, *see supra* note 5, is consistent with FICC's statements in this regard.

[10] *See* FICC Notice, *supra* note 3, 87 FR at 67517.

[11] *Id.*

reviews to the Board Risk Committee.[12] In addition, FICC would test any non-QLR annually with the respective liquidity providers to confirm that such liquidity providers are operationally able to perform their commitments and are familiar with the applicable process.

As a conforming change, the proposed changes would delete language referring to MRAs as QLR and add a sentence stating that FICC may count MRAs as QLR if the procedures for designating them described in I.B as such are followed. The proposed changes would also clarify that this section of the Framework regarding liquidity resources that are not designated as QLR applies specifically to FICC.

D. Descriptions of Due Diligence and Testing

The proposed changes would delete a stand-alone section on the due diligence and testing of liquidity providers in the Framework, move those descriptions of the due diligence and testing to the respective sections of the Framework where each liquidity resource is described, and clarify where testing would not be performed. The stand-alone section currently states that the Counterparty Credit Risk department (''CCR'') reviews the limits, outstanding investments, and collateral held (if applicable) at each investment counterparty. The proposed changes would (i) restate this language to make clear that CCR's review includes a financial analysis of each counterparty, the Clearing Agencies' investments at each counterparty, and any recommendations for changes in limits to these investments, and (ii) place the restated sentence in the section of the Framework related to the specific liquidity resource that CCR is surveilling.[13] The stand-alone section also references formal reviews on the reliability of QLR providers and specifically ascribes certain due diligence and review responsibilities to CCR. The proposed changes would describe CCR's obligations regarding liquidity providers in the appropriate section of the Framework related to the specific liquidity resource that CCR is surveilling. The proposed changes also indicate where another department, such as Treasury, is responsible for actions that the stand-alone section ascribes to CCR. For non-QLR liquidity resources, the proposed rule change would describe FICC's role in reviewing these resources.

In addition, the proposed changes would add language to the descriptions of DTC's and NSCC's QLR to reflect DTC's and NSCC's current practices of conducting surveillance of bank lenders to their committed credit facility, and testing the committed credit facility at least annually to confirm that the lenders, agents and respective Clearing Agency are operationally prepared to meet their obligations under the facility and are familiar with the borrowing process.

With respect to NSCC, the proposed changes would provide that, because the process for collecting Supplemental Liquidity Deposits (''SLD''), pursuant to NSCC Rule 4A, is the same process used for collecting required deposits to the NSCC Clearing Fund, and Members are aware of such process, no testing is required for purposes of Rule 17Ad–22(e)(7)(v) under the Act.[14] In addition, the proposed changes would state that NSCC conducts Member outreach with those Members whose liquidity exposure may require them to make SLD in the future.

The proposed changes would also make a correction to the description of DTC's Collateral Monitor. Currently, the Framework states that the Liquidity Risk Product Unit verifies that the Collateral Monitor will not become negative if the transaction is processed. Since DTC states that verification is done automatically,[15] the proposed rule change would correct the sentence to state that DTC performs this verification automatically.

E. Description of the Clearing Agencies' QLR

The proposed changes would also make certain clarifications regarding each Clearing Agency's QLR, although they would not change what resources are available as QLR.

With respect to FICC, the proposed changes would clarify that each FICC division has its own Clearing Fund that includes deposits of cash and delete language regarding the ability of FICC to borrow from the Clearing Fund that is already covered in the Rules of each division.[16] The proposed changes would also clarify that such cash deposits would be held at creditworthy commercial banks that provide same day access to funds. Moreover, the proposed changes would clarify that the rules-based committed Capped Contingency Liquidity Facility programs are determined for each FICC division per the division's respective Rules.[17] Further, the Framework would clarify that FICC's members are not considered ''liquidity providers'' with respect to their Clearing Fund deposits, with reference to Rules 17Ad–22(e)(7)(iv) and (v) under the Act.[18]

With respect to NSCC, the proposed changes would clarify the description of QLR by deleting language regarding the ability of NSCC to borrow from the Clearing Fund that is already covered in the NSCC Rules [19] and replacing ''medium- and long-term'' with ''senior'' (which covers both medium- and long-term) before ''unsecured notes'' to simplify terminology.[20]

The proposed changes would also clarify the descriptions of DTC's and NSCC's QLR by adding language on same day access to funds regarding deposits of DTC Participants Fund and NSCC Clearing Fund in creditworthy commercial banks. Moreover, the proposed changes would make clear that DTC Participants and NSCC Members, respectively, are not considered ''liquidity providers'' with respect to their DTC Participants Fund deposits and NSCC Clearing Fund deposits, with reference to Rules 17Ad–22(e)(7)(iv) and (v) under the Act.[21]

F. Technical Changes

The proposed changes include certain technical changes as follows:

- Make conforming and cross-reference changes in the Executive Summary;
- Delete a sentence that states that liquidity resources are maintained consistent with risk tolerances, whereas the correct statement is that liquidity resources are maintained consistent with Rule 17Ad–22(e)(7) under the Act,[22] which is already stated elsewhere in the Framework;
- Make conforming and cross-reference changes in the general section on ''Liquidity Resources;''

[12] Such due diligence would include reviews of relevant member financial metrics, results of operational testing, and relevant market data applicable to the type of securities being financed.

[13] The Clearing Agencies note that a sentence in the stand-alone section that refers to a review of each investment counterparty's deposit level at the Federal Reserve Bank of New York would not be retained because it reflects a drafting error (the Clearing Agencies are concerned with their deposits at the counterparties and not the counterparties' deposits at the Federal Reserve Bank of New York). *See* DTC Notice, *supra* note 3, 87 FR at 67529, n.14; FICC Notice, *supra* note 3, 87 FR at 67517, n.14; NSCC Notice, *supra* note 3, 87 FR at 67723, n.14.

[15] *See* DTC Notice, *supra* note 3, 87 FR at 67530.

[16] *See* FICC/GSD Rule 4, Section 5 and FICC/MBSD Rule 4, Section 5, *available at http://dtcc.com/legal/rules-and-procedures.*

[17] *See* FICC/GSD Rule 22A, Section 2a and FICC/MBSD Rule 17, Section 2a, *available at http://dtcc.com/legal/rules-and-procedures.*

[18] 17 CFR 240.17Ad–22(e)(7)(iv) and (v).

[19] *See* NSCC Rule 4, Section 12, *available at http://dtcc.com/legal/rules-and-procedures.*

[20] *See* NSCC Notice, *supra* note 3, 87 FR at 67723.

[21] 17 CFR 240.17Ad–22(e)(7)(iv) and (v).

[22] 17 CFR 240.17Ad–22(e)(7).

- Restate the first sentence in the section describing FICC's QLR for clarity;
- Remove cross-references and phrases referencing other sections of the Framework where such references are no longer correct;
- Add the word ''FICC'' to the end of a sentence where it was inadvertently deleted; and
- Renumber the last three sections of the Framework to account for the deletion of the section on due diligence/testing.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [23] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After carefully considering the Proposed Rule Changes and confidential Exhibit 3,[24] the Commission finds that the Proposed Rule Changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Clearing Agencies. In particular, the Commission finds that the Proposed Rule Change is consistent with Sections 17A(b)(3)(F) [25] of the Act and Rule 17Ad–22(e)(7) thereunder.[26]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act [27] requires, in part, that the rules of a clearing agency 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.[28]

The proposed changes would update the Framework to (1) describe the process by which FICC would designate uncommitted liquidity resources as QLR; (2) clarify that FICC may have access to liquidity resources that are not designated as QLR; (3) delete the stand-alone section on due diligence and testing of liquidity providers, and instead add due diligence and testing descriptions where each liquidity resource is described; (4) clarify the description of FICC's QLR; (5) clarify the description of NSCC's and DTC's QLR, add language to reflect NSCC's and DTC's current due diligence and testing processes regarding their committed line of credit, and make a correction to the description of DTC's Collateral Monitor; and (6) make technical changes.

The Commission believes that these proposed changes will improve the clarity of descriptions of the Clearing Agencies' Framework and enable the Clearing Agencies to more effectively deploy their risk management tools to manage liquidity risks presented by their members. For example, the proposed changes will describe the specific process through which FICC could designate uncommitted resources as QLR, and this process would be designed to ensure that any uncommitted resource that is designated as QLR would be highly reliable in extreme but plausible market conditions. The proposed changes, therefore, would enhance the Clearing Agencies' liquidity risk management functions, which are designed help the Clearing Agencies maintain sufficient liquid resources to meet their potential funding obligations to timely settle outstanding transactions of a defaulting participant or family of affiliated participants. For these reasons, the Commission finds that the proposed changes are designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds in the custody and control of the Clearing Agencies consistent with the requirements of Section 17A(b)(3)(F) of the Act.[29]

B. Consistency With Rule 17Ad–22(e)(7)

Rule 17Ad–22(e)(7) under the Act [30] requires covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, meeting the requirements set forth in Rule 17Ad–22(e)(7).

The Commission believes that the proposed changes described above are consistent with the requirements of Rule 17Ad–22(e)(7). By clarifying FICC's process for designating uncommitted liquidity resources as QLR, the proposed changes are designed to ensure that any uncommitted resource that is designated as QLR would be highly reliable in extreme but plausible market conditions to be consistent with the requirements of Rule 17Ad–22(a)(14) under the Act,[31] thereby facilitating FICC's ability to hold QLR sufficient to meet its minimum liquidity resource requirements under Rule 17Ad–22(e)(7). Moreover, by identifying liquidity resources that are not QLR and providing various clarifications, the proposed changes would reduce ambiguity and thus assist risk management staff in the performance of their duties associated with the Clearing Agencies' compliance with Rule 17Ad–22(e)(7).

For these reasons, the Commission believes that proposed changes are consistent with Rule 17Ad–22(e)(7) under the Act.[32]

III. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Changes are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [33] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [34] that proposed rule changes SR–DTC–2022–011, SR–FICC–2022–008, and SR–NSCC–2022–013, be, and hereby are, *approved.*[35]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Sherry R. Haywood,

Assistant Secretary.

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[23] 15 U.S.C. 78s(b)(2)(C).

[24] *See supra* note 5.

[25] 15 U.S.C. 78q–1(b)(3)(F).

[26] 17 CFR 240.17Ad–22(e)(7).

[27] 15 U.S.C. 78q–1(b)(3)(F).

[28] *Id.*

[29] *Id.*

[30] 17 CFR 240.17Ad–22(e)(7).

[31] 17 CFR 240.17Ad–22(a)(14).

[32] 17 CFR 240.17Ad–22(e)(7).

[33] 15 U.S.C. 78q–1.

[34] 15 U.S.C. 78s(b)(2).

[35] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[36] 17 CFR 200.30–3(a)(12).