

Act,<sup>10</sup> in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Commission believes that the market price of Eligible ETNs should exhibit a strong correlation to the performance of the relevant underlying asset, since holders of such securities will be unlikely to sell them for less than their redemption value if they have a weekly right to be redeemed for their full value. This weekly redemption feature is similar to the daily redemption feature available in ETFs. In addition, Eligible ETNs are typically continuously offered, on a daily basis, so that the issuer would have the ability to issue new securities from time to time at market prices. This process is similar to the manner in which ETFs are continuously offered via the creation/redemption process in Creation Unit aggregations (*i.e.*, 50,000 shares).

Accordingly, the Commission believes the proposed rule change is consistent with the Act in permitting Eligible ETNs to trade subject to the Exchange's AEMI trading rules for ETFs.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-Amex-2007-109), as modified, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E8-4315 Filed 3-5-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57406; File No. SR-DTC-2007-06]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Modify the Hearing Procedures Afforded to Interested Persons for Membership and Harmonize Them With Similar Rules of Its Affiliates

February 29, 2008.

#### I. Introduction

On April 30, 2007, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2007-06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the **Federal Register** on December 6, 2007.<sup>2</sup> No comment letters were received on the proposal. This order approves the proposal.

#### II. Description

The proposed rule change (1) modifies DTC's rules regarding hearing procedures afforded to Interested Persons<sup>3</sup> and (2) where practicable or beneficial, harmonizes such rules with similar rules of DTC's affiliates, the Fixed Income Clearing Corporation ("FICC") and the National Securities Clearing Corporation ("NSCC").<sup>4</sup>

##### A. Minor Rule Violation Plan

In 1984, the Commission adopted amendments to Rule 19d-1(c) under the Act<sup>5</sup> that allow self-regulatory organizations with Commission approval to adopt plans for the disposition of minor violations of rules.<sup>6</sup>

Currently under DTC's rules, an Interested Person subject to disciplinary action has a right to a hearing before a panel selected by the Chairman of the Board from a pool of persons that are

employed by or are partners of DTC's participants. Because some rule violations are not sufficiently serious to merit Board review, DTC is adopting a Minor Rule Violation Plan within the meaning of Rule 19d-1(c)(2) under the Act for those rule violations DTC deems minor. Consistent with Rule 19d-1(c)(2) under the Act, DTC is designating as minor rule violations those rule violations for which a fine may be assessed in an amount not to exceed \$5,000. If an Interested Person disputes a fine imposed by DTC by filing a written request for hearing and a written statement setting forth, among other things, the action or proposed action with respect to which the hearing is being requested and the basis for objection to such action, DTC management would have the authority to waive the fine. DTC management would notify the Board of Directors or a Committee authorized by the Board of Directors of its determination to waive the fine and would provide the reasons for the waiver. The Board or Committee could in its discretion decide to reinstate any fine waived by DTC management. If DTC management were not to waive the fine, the Interested Person could appeal the decision to a panel comprised of DTC officers ("Minor Rule Violation Panel").

##### B. Hearings for All Other Violations and Minor Rule Violation Appeals

For matters involving (1) an alleged violation of a DTC rule for which a fine in an amount of over \$5,000 is assessed, (2) applicants for membership, (3) other disciplinary actions to which the Minor Rule Violation Plan would not apply, or (4) for appeals from a Minor Rule Violation Panel decision adverse to an Interested Person, the Interested Person is entitled to a hearing before a panel selected by the Chairman of the Board from a pool of persons that are employed by or are partners of participants. Members of the pool are appointed by the Board or by the Chairman. Decisions of the panel are final; however, the full Board of Directors retains the right to modify any sanction or reverse any decision of the panel that is adverse to the Interested Person.

Currently with respect to hearings, an Interested Person is afforded the opportunity to be heard and may be represented by counsel if desired. A record is kept of the hearing, and at the discretion of the panel, the associated cost may be charged in whole or part to the Interested Person in the event that the decision is adverse to the Interested Person. The Interested Person is advised of the panel's decision within ten

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 56863 (Nov. 29, 2007), 72 FR 68920.

<sup>3</sup> An Interested Person is defined by DTC's Rules as a Participant, Pledgee, or applicant to become a Participant or Pledgee, or issuer of a Security. Rule 22, Section 1.

<sup>4</sup> FICC and NSCC have filed similar proposed rule changes. Securities Exchange Act Release No. 56864 (Nov. 29, 2007), 72 FR 68922. Securities Exchange Act Release No. 57405 (Feb. 29, 2008) [SR-FICC-2007-06]. Securities Exchange Act Release No. 56865 (Nov. 29, 2007), 72 FR 68930. Securities Exchange Act Release No. 57404 (Feb. 29, 2008) [SR-NSCC-2007-06].

<sup>5</sup> 17 CFR 240.19d-1(c).

<sup>6</sup> Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) [File No. S7-983A].

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

business days after the conclusion of the hearing. These procedures would also apply with respect to the Minor Rule Violation Plan.

### C. Administrative Changes: Uniformity of Time Frames

The rule changes will implement uniform time periods among DTC, FICC, and NSCC governing actions an Interested Person would be required to take in order to request a hearing.<sup>7</sup> Under the rule change, an Interested Person has five business days from the date on which DTC first informs it of a sanction or a denial of membership in which to request a hearing.

Within seven business days, or three business days in the case of a summary action taken against the Interested Person, after filing a request for a hearing with DTC, the Interested Person is required to submit to DTC a clear and concise written statement setting forth the action or proposed action of DTC with respect to which the hearing is requested, the basis for objection to such action, whether the Interested Person intends to attend the hearing, and whether the Interested Person chooses to be represented by counsel at the hearing.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),<sup>8</sup> which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions and with the requirements of Section 17A(b)(3)(H)<sup>9</sup> which, among other things, requires that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants and the denial of participation to any person seeking to be a participant. The Commission finds that the proposed rule change, which harmonizes DTC's hearing procedure rules with those of FICC and NSCC and which adopts a Minor Rule Violation

Plan, is consistent with those statutory obligations.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>10</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-DTC-2007-06) be, and hereby is, approved.<sup>12</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-4342 Filed 3-5-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57405; File No. SR-FICC-2007-06]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Modify the Hearing Procedures Afforded to Members and Applicants for Membership and Harmonize Them With Similar Rules of Its Affiliates

February 29, 2008.

#### I. Introduction

On April 30, 2007, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission"), and on July 24, 2007 amended<sup>1</sup> proposed rule change SR-FICC-2007-06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>2</sup> The proposed rule change was published for comment in the **Federal Register** on December 6, 2007.<sup>3</sup> No comment letters were received on the proposal. This order approves the proposal.

#### II. Description

The proposed rule change (1) modifies the rules of FICC's Government

Securities Division ("GSD") and Mortgage-Backed Securities Division ("MBSD") (GSD and MBSD are collectively referred to as the "Divisions"), including the EPN rules of MBSD, regarding hearing procedures afforded to members and applicants for membership and (2) where practicable or beneficial, harmonizes such rules with similar rules of FICC's affiliates. The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC").<sup>4</sup>

#### A. Minor Rule Violation Plan

In 1984, the Commission adopted amendments to Rule 19d-1(c) under the Act<sup>5</sup> that allow self-regulatory organizations with Commission approval to adopt plans for the disposition of minor violations of rules.<sup>6</sup>

Currently under each Division's rules, a member or applicant subject to disciplinary action has a right to a hearing before a panel comprised of members of FICC's Board of Directors regardless of the severity of the action for which the member or applicant is being disciplined.<sup>7</sup> Because some rule violations are not sufficiently serious to merit Board review, FICC is adopting a Minor Rule Violation Plan within the meaning of Rule 19d-1(c)(2) under the Act for those rule violations FICC deems minor. Consistent with Rule 19d-1(c)(2) under the Act, FICC is designating as minor rule violations those rule violations for which a fine may be assessed in an amount not to exceed \$5,000. If a member disputes a fine imposed by FICC by filing a written request for hearing and a written statement setting forth, among other things, the action or proposed action with respect to which the hearing is being requested and the basis for objection to such action, FICC management would have the authority to waive the fine. FICC management would notify the Board of Directors or a Committee authorized by the Board of Directors of its determination to waive the fine and would provide the reasons for the waiver. The Board or Committee could in its discretion decide to

<sup>4</sup> DTC and NSCC have filed similar proposed rule changes. Securities Exchange Act Release No. 56863 (Nov. 29, 2007), 72 FR 68920, Securities Exchange Act Release No. 57406 (Feb. 29, 2008) [SR-DTC-2007-06]. Securities Exchange Act Release No. 56865 (Nov. 29, 2007), 72 FR 68930, Securities Exchange Act Release No. 57404 (Feb. 29, 2008) [SR-NSCC-2007-06].

<sup>5</sup> 17 CFR 240.19d-1(c).

<sup>6</sup> Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) [File No. S7-983A].

<sup>7</sup> MBSD Article V, Rule 7 ("Appeals"); EPN Article X, Rule 7 ("Appeals"); and GSD Rule 37 ("Hearing Procedures").

<sup>7</sup> Except that FICC and NSCC rules impose an accelerated deadline for a member or applicant to request a hearing in the case of summary action taken against the member or applicant. A summary action is an action taken prior to a hearing to determine the propriety of the action.

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(H).

<sup>10</sup> 15 U.S.C. 78q-1.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> The amendment corrected a typographical error in the proposed rule text.

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> Securities Exchange Act Release No. 56864 (Nov. 29, 2007), 72 FR 68922.