

Investment by the Lending Funds of Cash Collateral in the Non Money Market Investment Funds

1. Section 12(d)(1)(A) of the Act provides, in relevant part, that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company, any principal underwriter thereof, or any broker or dealer may sell securities of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent that the exemption is consistent with the public interest and the protection of investors.

2. Applicants request an exemption under section 12(d)(1)(J) to permit the Lending Funds to invest Cash Collateral in shares of the Non Money Market Investment Funds in excess of the limits imposed by section 12(d)(1)(A), and each Non Money Market Investment Fund to sell its shares to the Lending Funds in excess of the limits in section 12(d)(1)(B).

3. Applicants state that none of the abuses meant to be addressed by sections 12(d)(1)(A) and (B) of the Act will be created by the proposed investment of Cash Collateral in the Non Money Market Investment Funds. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Non Money Market Investment Funds will not be subject to a sales charge or service fee. Applicants further represent that there will not be any duplicative advisory fees. Applicants also represent that no Non Money Market Investment Fund will acquire shares of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act other than as permitted by rule 12d1-1 under the Act, so that there will not be any complex fund structure.

4. Applicants also request an exemption under sections 6(c) and 17(b) of the Act, and an order pursuant to rule

17d-1 under the Act, to permit the Non Money Market Investment Funds to sell their shares to the Registered Lending Funds, the Registered Lending Funds to redeem shares from the Non Money Market Funds, and the Lending Agent to effectuate the investment of Cash Collateral in the Non Money Market Funds.

5. Applicants state that the Affiliated Lending Funds and the Non Money Market Investment Funds may be deemed to be under common control and therefore affiliated persons of each other. Applicants also state that if any Other Lending Fund acquires 5% or more of a Non Money Market Investment Fund's shares, the Other Lending Fund and the Non Money Market Investment Fund may be deemed affiliated persons of each other. Therefore, the sale of shares of the Non Money Market Investment Fund to the Registered Lending Funds, and the redemption of such shares in connection with the investment of Cash Collateral may be prohibited under sections 17(a)(1) and (2) of the Act. Applicants also state that the Lending Funds (by purchasing and redeeming shares of the Non Money Market Investment Funds), FAF Advisors (by managing the portfolio securities of the Affiliated Lending Funds and the Non Money Market Investment Funds at the same time that the Affiliated Lending Funds' Cash Collateral is invested in the Non Money Market Investment Funds, and serving as lending agent and receiving a portion of the Securities Lending Revenue), and the Non Money Market Investment Funds (by selling their shares to and redeeming shares from the Lending Funds) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d-1 under the Act.

6. Applicants state that the requested relief satisfies the standards of sections 6(c) and 17(b) of the Act and rule 17d-1 under the Act. Applicants state that shares of the Non Money Market Funds will be purchased and redeemed by the Lending Funds at net asset value, on the same basis as the shares are purchased and redeemed by all other shareholders of the Non Money Market Funds.

Applicants' Conditions

The applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The securities lending program of each Registered Lending Fund, including the investment of Cash Collateral, will comply with all present and future guidelines of the

Commission and its staff regarding securities lending arrangements.

2. No Registered Lending Fund will purchase shares of any Investment Fund unless participation in the Program has been approved by a majority of the directors or trustees of the Registered Lending Fund that are not interested persons of the Registered Lending Fund within the meaning of section 2(a)(19) of the Act. Such directors or trustees of each Registered Lending Fund also will evaluate the Program no less frequently than annually and determine that investing Cash Collateral in the Investment Fund is in the best interests of the shareholders of the Registered Lending Fund.

3. Investment in shares of an Investment Fund by a particular Registered Lending Fund will be consistent with the Registered Lending Fund's investment objectives and policies. A Registered Lending Fund's Cash Collateral will be invested in a particular Investment Fund only if the Registered Lending Fund has approved that Investment Fund for investment and if that Investment Fund invests in the types of instruments that the Registered Lending Fund has authorized for the investment of its Cash Collateral.

4. Shares of any Investment Fund will not be subject to a sales charge or service fee, as defined in rules 2830(b)(8) and (9), respectively, of the Conduct Rules of the National Association of Securities Dealers, Inc.

5. No Investment Fund may invest in shares of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act, other than as permitted by rule 12d1-1 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57665; File No. SR-DTC-2007-05]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Restructure Its Rules Relating to Fines and To Harmonize Them With Similar Rules of Its Affiliates

April 15, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ notice is hereby given that on May 15, 2007, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on December 10, 2007, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to amend DTC's fine structure relating to participants not providing financial information and notice of significant corporate changes to DTC in a timely manner and to harmonize DTC's rules with similar rules of DTC's affiliates, the National Securities Clearing Corporation ("NSCC") and the Fixed Income Clearing Corporation ("FICC"). NSCC and FICC have filed similar proposed rule changes.² DTC's proposed fine schedule is set forth in Exhibit 5 to its proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.³

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Fines Scheduled for Failure to Submit Financial and Other Information

DTC's rules (a) require participants to submit certain financial, regulatory, and other information within certain time frames and (b) enable DTC to levy fines against participants for violations of its rules. However, DTC's rules do not explicitly set forth the amount of the fine with respect to failure to submit such information. As part of the ongoing

effort to harmonize its rules with those of its clearing agency affiliates, DTC is proposing to adopt FICC's fine schedule for such violations.⁴ Pursuant to its filing, participants would be fined \$300, \$600, and \$1,500 for their first, second, and third occasion of failing to timely provide financial and other related information. The determination of the fine amount for the fourth and any subsequent occurrence of a late submission offense within a twelve-month rolling period would be made by management of DTC with the concurrence of the Board of Directors or a committee appointed by the Board.

Often a member that is fined is a common member of DTC and FICC, DTC and NSCC, or DTC, FICC, and NSCC (collectively the "Clearing Agencies"), which would cause the member to incur multiple penalties for the same offense. DTC is proposing that when a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies.⁵

(2) General Continuance Standards

DTC Rule 2 sets forth the basic standards for the admission of DTC participants. The rule states that the admission of a participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character. Rule 2 also requires DTC participants to demonstrate that these standards are met on an ongoing basis. Each applicant, upon approval of its application for DTC participation, signs a letter of representation that outlines the nature of the applicant's business, its DTC settlement projections, and its financial condition at the time of the approval and that requires the applicant to affirm that such representations are accurate. Moreover, the participant acknowledges its obligation to promptly notify DTC whenever there is any anticipated change in the representations given.

Under Rule 10, if a participant fails to continue to adhere to these standards,

then DTC, based on its judgment, may at any time cease to act for the participant with respect to a particular transaction, particular transactions, transactions generally, or a program and may terminate a participant's right to act as a Settling Bank. Both Rule 2 and Rule 10 give DTC the discretion to admit participants or to continue to act for them on a temporary or other conditional basis.

In the interest of harmonizing this provision with a similar FICC provision, DTC is proposing to: (a) Require a member to notify DTC of a member's non-compliance with general member continuance standards within two business days; (b) require the member to notify DTC within the two-day time frame if it becomes subject to a statutory disqualification; and (c) subject the member to a \$1,000 fine for failure to timely notify DTC.

In addition, DTC proposes to add a provision to its fine schedule that would impose a fine in the amount of \$5,000 if a participant fails to notify DTC of a "material change" to its business. A "material change" would include events such as a merger or acquisition involving the participant, a change in corporate form, a name change, a material change in ownership, control or management, and participation as a defendant in litigation which could reasonably be anticipated to have a direct negative impact on the participant's financial condition or ability to conduct its business. The proposed provision would provide that the notification must be provided 90 calendar days prior to the effective date of such event unless the participant demonstrates that it could not have reasonably have given notice within that time frame.

With respect to both fines, DTC is proposing that when a common member's failure to timely notify relates to the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies.⁶

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁷ and the rules and regulations thereunder. The proposed rules and fine provisions are intended to protect DTC and its participants from undue risk.

⁶ Where the member is a participant of DTC and also a member of one or more of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among the other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

⁷ 15 U.S.C. 78q-1.

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 57667 (April 15, 2008) [SR-NSCC-2007-07]. Securities Exchange Act Release No. 57666 (April 15, 2008) [SR-FICC-2007-05].

³ The Commission has modified the text of the summaries prepared by DTC.

⁴ NSCC has also proposed to adopt FICC's schedule. See File No. NSCC-2007-07.

⁵ For example, if a firm that is a member of DTC and FICC did not submit its annual audited financial statements within the required time frame, and this was the firm's first failure to meet the deadline, the \$200 fine will be split equally between DTC and FICC.

Where the member is a participant of DTC and also a member of one or more of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among the other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

DTC further states that the proposed changes will assist DTC and its participants in interpreting and understanding its fines. As a result, DTC will be better able to assure the safeguarding of securities in DTC's possession or control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited or received written comments relating to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date 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 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 No. DTC-2007-05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-DTC-2007-05. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-05.pdf and http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-05-amendment.pdf. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-DTC-2007-05 and should be submitted on or before May 13, 2008.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.⁸

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57666; File No. SR-FICC-2007-05]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Restructure the Rules of the Government Securities Division and the Mortgage-Backed Securities Division Relating to Fines and To Harmonize Them With Similar Rules of Its Affiliates and To Restructure the Watch List

April 15, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 30, 2007, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on May 18, 2007, December 10, 2007, and January 31, 2008, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to (i) restructure the Government Securities Division ("GSD") and the Mortgage-Backed Securities Division ("MBSD") rules related to fines, clearing fund consequences imposed on members for rule violations, and certain aspects of the watch list and (ii) harmonize its rules with similar rules of FICC's clearing agency affiliates, The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC"). DTC and NSCC have filed similar proposed rule changes.² FICC's proposed revisions to its fine schedule are set forth in Exhibit 5 to its proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 57665 (April 15, 2008) [SR-DTC-2007-05]. Securities Exchange Act Release No. 57667 (April 15, 2008) [SR-NSCC-2007-07].

⁸ 17 CFR 200.30-3(a)(12).