proposed rule change (SR–CboeEDGA–2019–013).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08380 Filed 4–20–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88646; File No. SR–CboeBZX–2019–069]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Introduce a Small Retail Broker Distribution Program

April 15, 2020.

On August 1, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the BZX fee schedule to introduce a Small Retail Broker Distribution Program. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on August 20, 2019.[4] The Commission received no comment letters regarding the proposed rule change. On September 30, 2019, the Commission issued an order temporarily suspending the proposed rule change pursuant to Section 19(b)(3)(C) of the Act[5] and simultaneously instituting proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change (''OIP'').[7] The Commission received no comment letters in response to the OIP. On February 12, 2020, pursuant to Section 19(b)(2) of the Act,[8] the Commission designated a longer period within which to approve or disapprove the proposed rule change.[9] On April 9, 2020, the Exchange withdrew the proposed rule change (SR–CboeBZX–2019–069).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08383 Filed 4–20–20; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(57) and (58).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 86667 (August 14, 2019), 84 FR 43233 (August 20, 2019).

[5] 15 U.S.C. 78s(b)(3)(C).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 87164 (September 30, 2019), 84 FR 53208 (October 4, 2019).

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Securities Exchange Act Release No. 88180 (February 12, 2020), 85 FR 9504 (February 19, 2020).

[10] 17 CFR 200.30–3(a)(57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33839; File No. 812–15019]

Great Elm Capital Corp., et al.

April 15, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

APPLICANTS: Great Elm Capital Corp. (''GECC''), Great Elm Capital Management, Inc. (''Great Elm Adviser''), each on behalf of itself and its successors,[1] and Great Elm Opportunities Fund I, LP (''Existing Affiliated Fund'').

FILING DATES: The application was filed on April 11, 2019, and amended on October 2, 2019 and January 16, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on May 11, 2020 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Great Elm Capital Corp. *geccoperations@greatelmcap.com.*

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. GECC is a Maryland corporation organized as a closed-end management investment company that has elected to be regulated as a BDC under section 54(a) of the Act.[2] GECC's Objectives and Strategies[3] are to seek to generate both current income and capital appreciation, while seeking to protect against risk of capital loss, by investing predominantly in the debt securities of middle market companies, which GECC defines as companies with enterprise values between $100.0 million and $2.0 billion. The business and affairs of GECC are managed under the direction of a Board,[4] a majority of whose

[1] For the purposes of the requested order, a ''successor'' includes an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[3] ''Objectives and Strategies'' means the investment objectives and strategies of a Regulated Fund (as defined below), as described in the Regulated Fund's registration statement, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (the ''Securities Act''), or under the Securities Exchange Act of 1934, and the Regulated Fund's reports to shareholders.

[4] The term ''Board'' means, with respect to any Regulated Fund, the board of directors of that Regulated Fund.

members are persons who are Non-Interested Directors.[5]

2. The Existing Affiliated Fund was formed as a Delaware limited partnership and would be an investment company but for section 3(c)(7) of the Act. The Existing Affiliated Fund's investment objective is to seek total returns by investing throughout the capital structures of leveraged issuers. From time to time, certain positions that are suitable for the Existing Affiliated Fund may also fit the investment objectives of GECC.

3. Great Elm Adviser, a Delaware corporation, is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). Great Elm Adviser serves as the investment adviser to GECC and the Existing Affiliated Fund.

4. Applicants seek an order (''Order'') to permit a Regulated Fund [6] and one or more other Regulated Funds and/or one or more Affiliated Funds [7] to (a) co-invest with each other in investment opportunities in which an Adviser (as defined below) negotiates terms in addition to price and (b) make additional investments in such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers (''Follow-On Investments'') through a proposed co-investment program (the ''Co-Investment Program'') where such participation would otherwise be prohibited under section 17(d) or section 57(a)(4) and the rules under the Act. ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or its ''Wholly-Owned Investment Sub,'' as defined below) participates together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more other Regulated Funds and/or one or more Affiliated Funds without obtaining and relying on the Order.[8]

5. Applicants state that any of the Regulated Funds may, from time to time, form one or more Wholly-Owned Investment Subs.[9] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any other Regulated Fund or Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Sub. The Regulated Fund's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Regulated Fund's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

6. Great Elm Adviser expects that any portfolio company that is an appropriate investment for a Regulated Fund should also be an appropriate investment for one or more other Regulated Funds and/or one or more Affiliated Funds, with certain exceptions based on available capital or diversification.[10] When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable Adviser will consider only the Objectives and Strategies, Board-Established Criteria,[11] investment policies, investment positions, capital available for investment, and other pertinent factors applicable to that Regulated Fund. Applicants believe that the use of Board-Established Criteria for each of the Regulated Funds is appropriate based on the potential size and scope of Great Elm Adviser's advisory business. Applicants argue that in addition to the other protections offered by the conditions, using Board-Established Criteria in the allocation of Potential Co-Investment Transactions

[5] The term ''Non-Interested Directors'' means, with respect to any Board, the directors who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act.

[6] ''Regulated Fund'' refers to GECC and any Future Regulated Fund. ''Future Regulated Fund'' means any closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC under the Act, (b) whose investment adviser is an Adviser, and (c) that intends to participate in the Co-Investment Program. The term ''Adviser'' means (a) Great Elm Adviser and (b) any future investment adviser that (i) controls, is controlled by or is under common control with Great Elm Adviser, (ii) (A) is registered as an investment adviser under the Advisers Act or (B) is a relying adviser of an investment adviser that is registered under the Advisers Act and that controls, is controlled by, or is under common control with, Great Elm Adviser, and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[7] An ''Affiliated Fund'' means (a) the Existing Affiliated Fund and (b) any Future Affiliated Fund. ''Future Affiliated Fund'' means any entity (a) whose investment adviser is an Adviser, (b) that would be an investment company but for section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program.

[8] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[9] The term ''Wholly-Owned Investment Sub'' means an entity (a) whose sole business purpose is to hold one or more investments on behalf of a Regulated Fund (and, in the case of an SBIC Subsidiary (as defined below), maintain a license under the Small Business Investment Act of 1958, as amended (the ''SBA Act'') and issue debentures guaranteed by the Small Business Administration (the ''SBA''); (b) that is wholly-owned by the Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (c) with respect to which the Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (d) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. All subsidiaries of the Regulated Fund participating in the Co-Investment Transactions will be Wholly-Owned Investment Subs. The term ''SBIC Subsidiary'' means a Wholly-Owned Investment Sub that is licensed by the SBA to operate under the SBA Act as a small business investment company (an ''SBIC'').

[10] The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

[11] The term ''Board-Established Criteria'' means criteria that the Board of the applicable Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions which would be within the Regulated Fund's then-current Objectives and Strategies that the applicable Adviser should consider as appropriate for the Regulated Fund. If no Board-Established Criteria are in effect for a Regulated Fund, then such Adviser will consider all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies for that Regulated Fund. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve discretionary assessment. The Adviser to a Regulated Fund may from time to time recommend criteria for the applicable Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Non-Interested Directors. The Non-Interested Directors of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

will further reduce the risk of subjectivity in the Adviser's determination of whether an investment opportunity is appropriate for a Regulated Fund. In connection with the Board's annual review of the continued appropriateness of any Board-Established Criteria under condition 9, the Regulated Fund's Adviser will provide information regarding any Co-Investment Transaction (including, but not limited to, Follow-On Investments) effected by the Regulated Fund that did not fit within the then-current Board-Established Criteria.

7. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), for each Regulated Fund, the applicable Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act (''Eligible Directors''), and the ''required majority,'' as defined in section 57(o) of the Act (''Required Majority'') [12] will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

8. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

[12] In the case of a Regulated Fund that is a registered fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

9. No Non-Interested Director of a Regulated Fund will have a direct or indirect financial interest in any Co-Investment Transaction (other than indirectly through share ownership in one of the Regulated Funds), including any interest in any company whose securities would be acquired in a Co-Investment Transaction.

10. Applicants also represent that if the Advisers, the principal owners of any of the Advisers (the ''Principals''), or any person controlling, controlled by, or under common control with the Advisers or the Principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25% of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as required under condition 14. Applicants believe this condition will ensure that the Non-Interested Directors will act independently in evaluating the Co-Investment Program, because the ability of the Advisers or the Principals to influence the Non-Interested Directors by a suggestion, explicit or implied, that the Non-Interested Directors can be removed will be limited significantly. Applicants represent that the Non-Interested Directors will evaluate and approve any such independent third party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC or a company controlled by a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control with a BDC is subject to section 57(a)(4). Applicants submit that each of the Regulated Funds and Affiliated Funds could be deemed to be a person related to each Regulated Fund in a manner described by section 57(b) by virtue of being under common control. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in many circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. (a) Each Adviser will establish, maintain and implement policies and procedures reasonably designed to ensure that it identifies for each Regulated Fund all Potential Co-Investment Transactions that (i) the Adviser considers for any other Regulated Fund or Affiliated Fund and (ii) fall within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria.

(b) When an Adviser identifies a Potential Co-Investment Transaction for a Regulated Fund under condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If an Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, the Adviser will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by an Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each. Each Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's available capital to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1(b) and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the Regulated Fund's equity holders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or any Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of any other Regulated Funds or any Affiliated Funds; provided that, if any other Regulated Fund or any Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition 2(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; and

(B) the Adviser agrees to, and does, provide periodic reports to the Board of the Regulated Fund with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Regulated Fund or any Affiliated Fund or any affiliated person of any Regulated Fund or any Affiliated Fund receives in connection with the right of a Regulated Fund or an Affiliated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who may each, in turn, share its portion with its affiliated persons) and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit any Adviser, the other Regulated Funds, the Affiliated Funds, or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by sections 17(e) or 57(k) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any other Regulated Fund or Affiliated Fund during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,[13] a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Affiliated Fund, or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor. The applicable Adviser will maintain books and records that demonstrate compliance with this condition for such Regulated Fund.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to another Regulated Fund or an Affiliated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B), and (C) are met.

7. (a) If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Regulated Funds and Affiliated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated

[13] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to such Regulated Fund's participation to such Regulated Fund's Eligible Directors, and such Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in such Regulated Fund's best interests.

(d) Each Regulated Fund and each Affiliated Fund will bear its own expenses in connection with any such disposition.

8. (a) If a Regulated Fund or an Affiliated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of a Follow-On Investment is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the applicable Advisers to be invested by each Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the participating Affiliated Funds in the same transaction, exceeds the amount of the opportunity; then the amount invested by each such party will be allocated among them pro rata based on each party's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria, including investments in Potential Co-Investment Transactions made by other Regulated Funds and Affiliated Funds, that the Regulated Fund considered but declined to participate in, and concerning Co-Investment Transactions in which the Regulated Fund participated, so that the Non-Interested Directors may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those Potential Co-Investment Transactions which the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually (a) the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions and (b) the continued appropriateness of any Board-Established Criteria.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f).

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act), of any Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Affiliated Funds and the Regulated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee [14] (including break-up or commitment fees but excluding brokerage or underwriting compensation permitted by section 17(e) or 57(k) of the Act, as applicable) received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C), (b) brokerage or underwriting compensation permitted by section 17(e) or 57(k) of the Act or (c) in the case of an Adviser, investment advisory fees paid in accordance with the investment advisory agreement between the Adviser and the Regulated Fund or Affiliated Fund).

14. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will

[14] Applicants are not requesting and the staff of the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) all other matters under either the Act or applicable State law affecting the Board's composition, size or manner of election.

15. Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

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

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88637; File No. SR–NSCC–2020–008]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the Clearing Agency Model Risk Management Framework

April 15, 2020.

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 April 10, 2020, National Securities Clearing Corporation (''NSCC'') 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

(a) The proposed rule change of NSCC would amend the Clearing Agency Model Risk Management Framework (''Framework'') of NSCC and its affiliates The Depository Trust Company (''DTC'') and Fixed Income Clearing Corporation (''FICC,'' and FICC together with NSCC, the ''CCPs,'' and the CCPs together with DTC, the ''Clearing Agencies'').[3] Specifically, the proposed rule change would amend the Framework to (i) change the governance structure for approval of a model [4] validation (''Model Validation''), (ii) incorporate a model risk tolerance statement (''Model Risk Tolerance Statement'') and related provisions, (iii) clarify the definition of Model Owner (as defined below), (iv) reflect changes in the role of the Model Risk Governance Committee and a change of its name, (v) redefine the first and second line responsibilities and incentives relating to model performance monitoring and oversight and (vi) make other technical and clarifying changes to the text, as more fully described below.

Although the Clearing Agencies consider the Framework to be a rule, the proposed rule change does not require any changes to the Rules, By-Laws and Organization Certificate of DTC (''DTC Rules''), the Rulebook of the Government Securities Division (''GSD'') of Fixed Income Clearing Corporation (such Rulebook hereinafter referred to as ''GSD Rules''), the Clearing Rules of the Mortgage-Backed Securities Division (''MBSD'') of Fixed Income Clearing Corporation (''such Clearing Rules hereinafter referred to as ''MBSD Rules''), or the Rules & Procedures of NSCC (''NSCC Rules''), as the Framework would be a standalone document.[5]

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 proposed rule change would amend the Framework to (i) change the governance structure for approval of a Model Validation, (ii) incorporate the Model Risk Tolerance Statement with respect to related forward-looking provisions associated with maintaining multiple model risk-related tolerance statements, (iii) clarify the definition of Model Owner, (iv) reflect changes in the role of the Model Risk Governance Committee and a change of its name, (v) redefine the first and second line responsibilities and incentives relating to model performance monitoring and oversight and (vi) make other technical and clarifying changes to the text, as more fully described below.

Although the Clearing Agencies consider the Framework to be a rule, the proposed rule change does not require any changes to the DTC Rules, GSD Rules, MBSD Rules, or NSCC Rules, as the Framework would be a standalone document.

Background

The Framework is maintained by the Clearing Agencies for compliance with Rule 17Ad–22 (e)(4)(i), (e)(4)(vii), (e)(6)(iii), (e)(6)(vi), (e)(6)(vii), and (e)(7)(vii) under the Act,[6] and sets forth the model risk management practices

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

[2] 17 CFR 240.19b–4.

[3] The Framework sets forth the model risk management practices adopted by the Clearing Agencies, which have been designed to assist the Clearing Agencies in identifying, measuring, monitoring, and managing the risks associated with the design, development, implementation, use, and validation of quantitative models. *See* Securities Exchange Act Release No. 81485 (August 25, 2017), 82 FR 41433 (August 31, 2017) (File Nos. SR–DTC–2017–008; SR–FICC–2017–014; SR–NSCC–2017–008) (''2017 Notice''). The Framework is managed by the Clearing Agencies' risk management areas generally responsible for model validation and control matters, DTCC Model Validation and Control (''MVC''), on behalf of each Clearing Agency, with review and oversight by senior management and the Risk Committee of the Board of Directors of each of DTC, FICC, and NSCC (collectively, ''Boards''). *See Id.*

[4] The Clearing Agencies have adopted the following definition for the term ''model'': ''[M]odel'' refers to a quantitative method, system, or approach that applies statistical, economic, financial, or mathematical theories, techniques, and assumptions to process input data into quantitative estimates. A ''model'' consists of three components: An information input component, which delivers assumptions and data to the model; a processing component, which transforms inputs into estimates; and a reporting component, which translates the estimates into useful business information. The definition of ''model'' also covers quantitative approaches whose inputs are partially or wholly qualitative or based on expert judgment, provided that the output is quantitative in nature. *See* Supervisory Guidance on Model Risk Management, SR Letter 11–7, dated April 4, 2011, issued by the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency, at 3.

[5] Capitalized terms not defined herein are defined in the DTC Rules, NSCC Rules, GSD Rules or MBSD Rules, as applicable, *available at http://dtcc.com/legal/rules-and-procedures.*

[6] 17 CFR 240.17Ad–22 (e)(4)(i), (e)(4)(vii), (e)(6)(iii), (e)(6)(vi), (e)(6)(vii), and (e)(7)(vii). Each of DTC, NSCC and FICC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5) and must comply with subsection (e) of Rule 17Ad–22. References to Rule 17Ad–22(e)(6) and its subparagraphs cited herein, and compliance therewith, apply to the CCPs only and do not apply to DTC.