

DATES: Comments must be received on or before July 28, 2017.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

- *Email:* reg.comments@pbgc.gov.
- *Mail or Hand Delivery:* Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026. Comments received, including personal information provided, will be posted to www.pbgc.gov. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026 or calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040.)

FOR FURTHER INFORMATION CONTACT: Bruce Perlin, Assistant Chief Counsel (Perlin.Bruce@PBGC.gov), 202-326-4020, ext. 6818, or Jon Chatalian, Deputy Assistant Chief Counsel (Chatalian.Jon@PBGC.gov), ext. 6757, Office of the Chief Counsel, Suite 340, 1200 K Street NW., Washington, DC 20005-4026; (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4020.)

SUPPLEMENTARY INFORMATION:

Background

The Pension Benefit Guaranty Corporation (PBGC) administers title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Section 4221(a)(1) of ERISA requires “any dispute” between an employer and a multiemployer pension plan concerning a withdrawal liability determination to be “resolved through arbitration.”

In lieu of PBGC’s default arbitration procedures, under 29 CFR 4221.14, a withdrawal liability arbitration may be conducted in accordance with an alternative arbitration procedure approved by the PBGC in accordance with § 4221.14(c). Under § 4221.14(c), the sponsor of an arbitration procedure may request PBGC approval of its procedures by submitting an application to the PBGC. The application must include: (1) A copy of the procedures for which approval is sought; (2) a description of the history, structure and membership of the organization that sponsors the procedures; and (3) a

discussion of the reasons why, in the sponsoring organization’s opinion, the procedures satisfy the criteria for approval set forth in this section. Under § 4221.14(d), PBGC shall approve an application if it determines that the proposed procedures will be substantially fair to all parties involved in the arbitration of a withdrawal liability dispute and that the sponsoring organization is neutral and able to carry out its role under the procedures.

On November 20, 2015, the American Arbitration Association (AAA) requested approval of an Alternative Arbitration Procedure under section 4221 of the Employee Retirement Income Security Act of 1974 and 29 CFR 4221.14. On March 23, 2016, PBGC published notice of AAA’s Request for Approval of Alternative Arbitration Procedure to advise interested persons of the request and solicit their views on it (81 FR 15578). The comments that PBGC received in response to AAA’s request are available for viewing at: <http://www.pbgc.gov/prac/pg/other/guidance/multiemployer-notices.html> or <https://www.regulations.gov/document?D=PBGC-2016-0001-0001>.

PBGC provided AAA with an opportunity to respond to the comments submitted in response to AAA’s request, as it deemed appropriate. On March 30, 2017, AAA responded to the comments; the response can be viewed at: <http://www.pbgc.gov/prac/pg/other/guidance/multiemployer-notices.html>.

All interested persons are invited to submit written comments to AAA’s March 30, 2017 letter.

All comments will be made part of the administrative record.

Issued in Washington, DC.

W. Thomas Reeder,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2017-12149 Filed 6-12-17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80879; File No. SR-FICC-2017-010]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Amend the Mortgage-Backed Securities Division Rules Concerning Use of Clearing Fund for Losses, Liabilities or Temporary Needs for Funds Incident to the Clearance and Settlement Business and Make Other Related Changes

June 7, 2017.

On April 11, 2017, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-FICC-2017-010 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the **Federal Register** on April 28, 2017.³ The Commission did not receive any comments on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is June 12, 2017.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act⁵ and for the reasons stated above, the Commission designates July 27, 2017 as the date by

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 80517 (April 24, 2017), 82 FR 19771 (April 28, 2017) (SR-FICC-2017-010).

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2)(A)(ii)(I).

which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR-FICC-2017-010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-12156 Filed 6-12-17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80870]

Commission Statement Concerning a Request for an Interpretation as to Whether a Particular Agreement Is a Swap, Security-Based Swap, or Mixed Swap

AGENCY: Securities and Exchange Commission.

ACTION: Commission statement.

SUMMARY: The Securities and Exchange Commission (the “Commission”) is publishing this statement concerning a request for an interpretation as to whether a particular agreement is a swap, security-based swap, or mixed swap.

FOR FURTHER INFORMATION CONTACT: Andrew Bernstein, Senior Special Counsel, Office of Derivatives Policy, Division of Trading and Markets, at (202) 551-5870, or Andrew Schoeffler, Special Counsel, Office of Capital Markets Trends, Division of Corporation Finance, at (202) 551-3860; U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

Statement

This statement pertains to a letter that Commission staff received from Breakaway Courier Corporation (“Breakaway”), through its counsel, requesting a joint interpretation from the Commission and the Commodity Futures Trading Commission (“CFTC”) pursuant to Rule 3a68-2 under the Securities Exchange Act of 1934 (“Exchange Act”) as to whether a particular agreement, contract, or transaction (or class thereof) is a swap, security-based swap, or mixed swap.¹ Breakaway’s request relates to a contract labeled as a Reinsurance Participation

Agreement (“RPA”), which it has previously executed with Applied Underwriters Captive Risk Assurance Company, Inc. (“AUCRA”).² According to Breakaway’s submission, it entered into two RPAs with AUCRA, one of which has a stated effective date of July 1, 2009, and the other of July 1, 2012.

The Commission and the CFTC jointly adopted Exchange Act Rule 3a68-2 and CEA Rule 1.8 in 2012³ pursuant to Section 712(d)(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).⁴ The rules established a process for parties to request a joint interpretation as to whether a particular agreement, contract, or transaction (or class thereof) is a swap, security-based swap, or a mixed swap. Among other things, the rules set forth the information required to be included in a request and a process for withdrawing a request. Rule 3a68-2 also includes requirements governing the manner and timing by which the two agencies must act after the receipt of a complete submission under the rule, if they determine to issue such joint interpretation. In addition, paragraph (e)(5) of Rule 3a68-2 provides that “[i]f the Commission and the [CFTC] do not issue a joint interpretation within the time period described in paragraph (e)(1) or (e)(3) [of the rule], each of the Commission and the [CFTC] shall publicly provide the reasons for not issuing such a joint interpretation within the applicable timeframes.”⁵

Pursuant to paragraph (e)(5) of Rule 3a68-2, the Commission is declining to issue a joint interpretation with the CFTC in connection with Breakaway’s request.⁶ The Commission understands that the status of the RPAs is already subject to ongoing private litigation and that the petitioners’ request may bear directly on that litigation. We believe that the Rule 3a68-2 process is not an appropriate vehicle for litigants such as

² A copy of Breakaway’s submission may be found at: <https://www.sec.gov/rules/other/2017/2017-331-tm-exhibit.pdf>.

³ See Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Exchange Act Release No. 67453 (Jul. 18, 2012), 77 FR 48207 (Aug. 13, 2012) (“Product Definitions Adopting Release”).

⁴ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010). All references to “Title VII” in this statement shall refer to Title VII of the Dodd-Frank Act, which established a comprehensive new regulatory framework for swaps and security-based swaps.

⁵ Paragraph (e)(5) of CFTC Rule 1.8 contains identical language (other than reversing the references to the two commissions).

⁶ Commission staff has consulted and coordinated with CFTC staff and understands that the CFTC will be issuing a separate statement on this matter.

Breakaway to obtain the views of the Commission in connection with issues in ongoing litigation, and we therefore decline Breakaway’s request that we state an interpretive position as to the proper characterization of the RPAs.⁷

Finally, to help ensure that requests under Rule 3a68-2 are expeditiously routed to appropriate staff, the Commission encourages market participants to provide the requests to the Office of the Secretary, with copies to the Division of Trading and Markets and the Division of Corporation Finance.

By the Commission.

Dated: June 7, 2017.

Brent J. Fields,
Secretary.

[FR Doc. 2017-12140 Filed 6-12-17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80876; File Nos. SR-DTC-2017-005; SR-FICC-2017-009; SR-NSCC-2017-006]

Self-Regulatory Organizations; The Depository Trust Company; Fixed Income Clearing Corporation; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Changes To Adopt the Clearing Agency Stress Testing Framework (Market Risk)

June 7, 2017.

On April 7, 2017, The Depository Trust Company (“DTC”), Fixed Income Clearing Corporation (“FICC”), and National Securities Clearing Corporation (“NSCC,” each a “Clearing Agency”) filed with the Securities and Exchange Commission (“Commission”), respectively proposed rule changes SR-DTC-2017-005, SR-FICC-2017-009, and SR-NSCC-2017-006 (collectively, the “Proposed Rule Changes”), pursuant to Section 19(b)(1) of the Securities

⁷ As we and the CFTC explained when we jointly adopted Rule 3a68-2 in 2012 (as well as the corresponding rule under the CEA), the purpose of the rule is to “afford market participants with the opportunity to obtain greater certainty from the Commissions regarding the regulatory status of particular Title VII instruments under the Dodd-Frank Act. This provision should decrease the possibility that market participants inadvertently might fail to meet the regulatory requirements applicable to a particular Title VII instrument.” See Product Definitions Adopting Release, 77 FR at 48295. We and the CFTC also noted our belief that “it is essential that the characterization of an instrument be established prior to any party engaging in the transactions so that the appropriate regulatory schemes apply.” See Product Definitions Adopting Release, 77 FR at 48297.

⁶ 17 CFR 200.30-3(a)(31).

¹ See 17 CFR 240.3a68-2. The letter specifically refers to the corresponding rule for the CFTC’s process, Rule 1.8 under the Commodity Exchange Act (“CEA”). 17 CFR 1.8.