

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83808; File No. SR-FICC-2018-007)

August 9, 2018

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Correct Certain References, Provide Transparency to Existing Processes and Amend Existing Practices in Connection with the Mortgage-Backed Securities Division Electronic Pool Notification Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 3, 2018, Fixed Income Clearing Corporation (“FICC”) 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

The proposed rule change consists of amendments to the FICC Mortgage-Backed Securities Division (“MBSD”) electronic pool notification (“EPN”) Rules (the “EPN Rules”)<sup>3</sup> as described below.

FICC is proposing to correct the EPN Rules by (i) deleting references to the term “EPN Procedures,” (ii) amending the definition of the term “Interested Person” to delete the reference to “Comparison Only System,” (iii) deleting the defined term for “Par Amount,” (iv) replacing references to the term “Vice President” with the term “Executive

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Terms not defined herein are defined in the EPN Rules, available at <http://www.dtcc.com/legal/rules-and-procedures>.

Director,” (v) amending Sec. 3 (Agreements of EPN User) in EPN Rule 1 (Requirements Applicable to EPN Users) of *Article III (EPN Users)* to clarify an EPN User’s obligation to process Messages through the EPN system during a system disruption, and (vi) amending EPN Rule 4 (Admission to Premises of Corporation; Power of Attorney) of *Article III (EPN Users)* to replace a reference to “he” with “such person.”

FICC is proposing to amend various sections in the EPN Rules to provide transparency to FICC’s existing processes. Specifically, FICC is proposing to amend EPN Rule 1 (Definitions) of *Article I (Definitions and General Provisions)*; Section 2 (Limitations) in EPN Rule 1 (Accounts) and Section 1 (Availability of Reports), Section 2 (Message Detail Report), Section 3 (Message Summary Report), and Section 5 (Good Delivery; Time Stamps) in EPN Rule 2 (Reports) of *Article II (Messages Processed by the Corporation)*; and EPN Rule 5 (Use of EPN Service) of *Article III (EPN Users)*.

FICC is also proposing to amend its existing practice in connection with an EPN User’s submission of a cancel and correct Message.<sup>4</sup> Specifically, FICC is proposing to establish one good delivery time stamp (referred to as the “T2”<sup>5</sup> time stamp) that reflects the same processing time on the pool seller’s and the pool buyer’s cancel and correct Message, respectively. The proposed change would not affect FICC’s guarantee and novation of transactions submitted by Clearing Members through MBSD’s Clearing System.<sup>6</sup>

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<sup>4</sup> See Article II, EPN Rule 2, Sec. 5, *supra* note 3.

<sup>5</sup> The reference to “T2” does not relate to the two business days settlement cycle for broker-dealer securities transactions, known as “T+2.”

<sup>6</sup> MBSD maintains two sets of rulebooks. The EPN Rules govern MBSD’s EPN Service, and the MBSD Clearing Rules (the “MBSD Rules”) govern MBSD’s clearance and settlement service. The MBSD Rules are available at

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

FICC is proposing to correct the EPN Rules by (i) deleting references to the term “EPN Procedures” because FICC does not maintain EPN Procedures, (ii) amending the definition of the term “Interested Person” to delete the reference to “Comparison Only System” because MBSD does not maintain a Comparison Only System, (iii) deleting the defined term for “Par Amount” because this term is not used in the EPN Rules, (iv) replacing references to the term “Vice President” with the term “Executive Director” because FICC no longer utilizes the Vice President title, (v) amending Sec. 3 (Agreements of EPN User) in EPN Rule 1 (Requirements Applicable to EPN Users) of *Article III (EPN Users)* to clarify an EPN User’s obligation to process Messages through the EPN system during a system disruption because this change would be an accurate

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<http://www.dtcc.com/legal/rules-and-procedures>. Pursuant to the MBSD Rules, the term “Clearing System” means the (i) system of services provided by MBSD to persons that are Clearing Members thereof, including trade comparison, to-be-announced netting, pool comparison, pool netting, and settlement, as applicable, and (ii) operations carried out by MBSD in the course of providing such services, as provided in the MBSD Rules. See MBSD Rule 1, Definitions.

reflection of FICC’s existing practice, and (vi) amending EPN Rule 4 (Admission to Premises of Corporation; Power of Attorney) of *Article III (EPN User)* to replace a reference to “he” with “such person” because the reference to “such person” would be gender neutral.

FICC is proposing to amend various sections in the EPN Rules to provide transparency to FICC’s existing processes. Specifically, FICC is proposing to amend EPN Rule 1 (Definitions) of *Article I (Definitions and General Provisions)*; Section 2 (Limitations) in EPN Rule 1 (Accounts) and Section 1 (Availability of Reports), Section 2 (Message Detail Report), Section 3 (Message Summary Report), and Section 5 (Good Delivery; Time Stamps) in EPN Rule 2 (Reports) of *Article II (Messages Processed by the Corporation)*; and EPN Rule 5 (Use of EPN Service) of *Article III (EPN Users)*.

FICC is also proposing to amend its existing practice in connection with an EPN User’s submission of a cancel and correct Message.<sup>7</sup> Specifically, FICC is proposing to establish one good delivery T2 time stamp<sup>8</sup> that reflects the same processing time on the pool seller’s and the pool buyer’s cancel and correct Message, respectively. As a result of this change, in the event that the T2 time stamp reflects a time that does not meet the good delivery requirements in accordance with the Securities Industry and Financial Markets Association’s (“SIFMA”) Uniform Practices Manual for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities (referred to in

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<sup>7</sup> See supra note 4.

<sup>8</sup> The good delivery T2 time stamp indicates whether good delivery has occurred with respect to a Message – meaning, if the T2 time stamp reflects a time that is at or before the established deadline, then good delivery has been established and the pool buyer will accept the Message with respect to the allocated securities.

the EPN Rules as the “SIFMA Guidelines”),<sup>9</sup> the financing of the mortgage pools associated with the Message, if any, would be the responsibility of the counterparties to such Message, as determined by such parties, in accordance with the SIFMA Guidelines. FICC is proposing this change because it would be consistent with the SIFMA Guidelines, and FICC believes that the parties to the Message are best positioned to ensure that a cancel and correct Message meets the good delivery requirements. The proposed change would not affect FICC’s guarantee and novation of transactions submitted by Clearing Members through MBSD’s Clearing System.

The proposed changes are described in detail below.

**(1) MBSD’s EPN Service**

MBSD’s electronic pool notification service (referred to in the EPN Rules as the “EPN Service”) enables users to reduce risk and streamline their operations by providing an automated manner for market participants that have an obligation to deliver pools (“pool sellers”) to transmit pool information efficiently and reliably to their counterparties (“pool buyers”) in real time. Market participants that wish to utilize the EPN Service are required to submit an application to MBSD. The application process and the use of the EPN Service are governed by the EPN Rules.<sup>10</sup> The EPN Rules are designed to be consistent with the SIFMA Guidelines, which reflect common industry practices for the trading, clearance and settlement of mortgage-backed securities transactions. MBSD’s Clearing Members are

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<sup>9</sup> The SIFMA Guidelines are available at <https://www.sifma.org/resources/general/tba-market-governance/>.

<sup>10</sup> See Article III, EPN Rule 1, supra note 3.

required to be EPN Users; however, one can be an EPN User and not a Clearing Member.<sup>11</sup>

**(2) Proposed Changes to Correct the EPN Rules**

FICC is proposing to amend the EPN Rules in order to correct various provisions in the EPN Rules. The proposed changes would help ensure that the EPN Rules are clear and accurate. The proposed changes reflect MBSB's existing practices and FICC believes that these changes would help EPN Users better understand their rights and obligations under the EPN Rules. The proposed changes are described in detail below.

**a. Article I – Definitions and General Provisions**

*Proposed Changes to EPN Rule 1 – Definitions*

FICC is proposing to delete the term “EPN Procedures.” EPN Rule 11 of Article V empowers FICC to adopt EPN Procedures as FICC “deems necessary or desirable.”<sup>12</sup> It appears that when FICC instituted the EPN Service and the related EPN Rules, EPN Procedures were not adopted at that time.<sup>13</sup> Since FICC does not currently maintain EPN

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<sup>11</sup> Pursuant to the MBSB Rules, the term “Clearing Member” means any entity admitted into membership pursuant to MBSB Rule 2A. See MBSB Rule 1, Definitions, supra note 6.

<sup>12</sup> See supra note 3.

<sup>13</sup> FICC instituted the EPN Service and the related EPN Rules on a pilot basis in February 1995. The Commission’s temporary approval order notes that Amendment No. 2 to the proposed rule change clarified that “the only MBS rules and procedures applicable to EPN users are the rules and procedures located in Articles VI, VII, VIII, IX, and X of MBS’s rules.” See Release No. 35009 (November 25, 1994) 59 FR 61913 (December 2, 1994) (SR-MBS-94-02). The Commission granted permanent approval of the EPN Service and the related EPN Rules in November 1995. See Release No. 36540 (November 30, 1995) 60 FR 63089 (December 8, 1995) (SR-MBS-95-09). It should be noted FICC submitted a proposed rule change in June 2017 which, among other things, renumbered the references of Articles VI, VII, VIII, IX, and X to refer to Articles I, II, III, IV and

Procedures, FICC has decided to conform the EPN Rules to its practices by deleting this definition and the related references throughout the EPN Rules because this inchoate power is itself not necessary.

FICC is proposing to amend the term “EPN Service” to delete the reference to EPN Procedures.

FICC is proposing to amend the term “EPN User Profile” to delete the reference to EPN Procedures. In connection with this change, FICC is proposing to make a grammatical correction to this definition by replacing the word “in” with “by” so that the definition would state that “the EPN User Profile would be on a form specified ‘by’ FICC.”

FICC is proposing to amend the term “Interested Person” to delete the reference to Comparison Only System because MBSD does not maintain a Comparison Only System. FICC believes that the inclusion of this term in the EPN Rules was an error.

FICC is proposing to delete the term “Par Amount” because this term is not otherwise referred to in the EPN Rules. FICC believes that the inclusion of this term in the EPN Rules was an error and that it has no practical effect because this term is not used in the EPN Rules. FICC notes that this term was included and not defined in a version of the EPN Rules that was filed with the Commission on October 20, 1999.<sup>14</sup>

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V, respectively. See Release No. 81002 (June 22, 2017) 82 FR 29355 (June 28, 2017) (SR-FICC-2017-015).

<sup>14</sup> Release No. 42721 (April 25, 2000) 65 FR 25778 (May 3, 2000) (SR-MBSCC-99-8).

**b. Article III – EPN Users**

*i. Proposed Changes to EPN Rule 1 – Requirements Applicable to EPN Users*

Section 3 (*Agreements of EPN Users*) sets forth a list of terms that an applicant is required to agree to, as specified in the EPN User Agreement. This list states, in part, that an applicant shall agree (i) to abide by and be bound by the EPN Rules and EPN Procedures, (ii) that the EPN Rules and EPN Procedures are incorporated into every contract or Message, (iii) that the EPN User shall pay fines that are imposed in accordance with the EPN Rules and EPN Procedures, and (iv) that it is bound by any amendment to the EPN Rules and EPN Procedures. FICC is proposing to delete all references in this section to the EPN Procedures.

Section 3 also includes a paragraph that states that in the event of an EPN system disruption and an extension of the cut-off times for communicating pool allocation information pursuant to the SIFMA Guidelines, EPN Users “will” be relieved of their obligation to process Messages through the EPN Service until the beginning of the next Business Day after the EPN system has been recovered. FICC is proposing to amend this provision to state that EPN Users “may” be relieved of their obligation to process Messages through the EPN Service until “later in the Business Day or” the beginning of the next Business Day after the EPN system has been recovered.

FICC is proposing this change because the nature of the EPN system disruption and MBSD’s ability to promptly fix such disruption determines whether the cut-off time would be extended to later in the Business Day or the next Business Day. In the event that FICC has the ability to promptly fix the EPN system disruption, EPN Users may be required to process their Messages in accordance with the applicable timeframes for the



remainder of the Business Day. However, if FICC cannot promptly fix the EPN system disruption, MBSD would relieve EPN Users of their obligation to process Messages through the EPN Service until the beginning of the next Business Day. In all cases, FICC coordinates with EPN Users and, to the extent necessary, SIFMA to communicate whether an extension of the cut-off time is necessary. Though EPN system disruptions are rare, the proposed change is consistent with MBSD's existing practice of handling system disruptions that impact the EPN Service.

Section 5 (*EPN Users Bound by EPN Rules, EPN Procedures and Applicable Laws*) states, in part, that the use of FICC's facilities by an EPN User shall constitute such EPN User's agreement with FICC and with all other EPN Users to be bound by the provisions of, and by any action taken or order issued by FICC pursuant to the EPN Rules and any amendment thereto, and to such EPN Procedures that FICC from time to time may adopt. FICC is proposing to amend the title of this section and the paragraph in this section to delete all references to EPN Procedures.

Section 6 (*EPN Rules and EPN Procedures Incorporated in EPN User Messages*) states that the EPN Rules and the EPN Procedures adopted from time to time by FICC shall be deemed incorporated in each Message that occurs through the EPN Service. It also states that if the terms contained in any other agreement between EPN Users are inconsistent with the provisions of the EPN Rules or the EPN Procedures, the EPN Rules and the EPN Procedures shall be controlling. FICC is proposing to amend the title of this section and the paragraph in this section to delete all references to EPN Procedures.

ii. Proposed Changes to EPN Rule 3 – When the Corporation Declines to Act for an EPN User

Section 1 (*Ceasing to Act for an EPN User*) in EPN Rule 3 states, in part, that FICC may at any time cease to act for an EPN User if the EPN User has (i) failed to perform its obligations to FICC or other EPN Users under the EPN Rules or the EPN Procedures or (ii) materially violated any of the EPN Rules, EPN Procedures or any agreement with FICC. FICC is proposing to amend this section to delete all references to the EPN Procedures.

iii. Proposed Changes to EPN Rule 4 – Admission to Premises of Corporation; Powers of Attorney

EPN Rule 4 states, in part, that no person shall be permitted to enter FICC's premises as the representative of any EPN User unless "he" has first been approved by FICC. FICC is proposing to delete the reference to "he" and replace it with "such person" because FICC believes that it would be more appropriate to use gender neutral terminology.

**c. Article V – Miscellaneous**

i. Proposed Changes to EPN Rule 1 – Action by the Corporation

EPN Rule 1 states that except where action by the Board, or any committee of the Board, is specifically required by the By-Laws or the EPN Rules, FICC may act by its President, any Managing Director or any Vice President or by such person as may be designated from time to time by the Board. FICC is proposing to amend this sentence to delete the reference to Vice President and replace it with Executive Director. FICC is proposing this change because FICC no longer utilizes the Vice President title. This category of officers is currently referred to as Executive Directors.

ii. *Proposed Changes to EPN Rule 3 – Fines and Other Sanctions*

EPN Rule 3 states that FICC may impose a fine on an EPN User for a violation of the EPN Rules or EPN Procedures. FICC is proposing to amend this paragraph to delete the reference to EPN Procedures.

iii. *Proposed Changes to EPN Rule 4 – Communications*

Section 1 (*Communications*) states, in part, that each EPN User maintaining an Account shall be required to maintain such data processing and communications equipment as FICC may specify in the EPN Procedures. FICC is proposing to delete the reference to EPN Procedures and amend this sentence to state that each EPN User maintaining an Account shall be required to maintain such data processing and communications equipment as FICC may specify from time to time. The proposed change is consistent with FICC's existing practice of providing data processing and communications equipment requirements to all approved applicants during the membership onboarding process. In the event that FICC changes or updates its data processing and communications equipment requirements, FICC partners with applicants and EPN Users to help ensure that their equipment is adequate and that such EPN Users are operationally ready. EPN Users are made aware of all changes or updates to FICC's data processing and communications equipment requirements because FICC communicates such changes through various forms of communication including but not limited to important notices, electronic mail and phone.

iv. *Proposed Changes to EPN Rule 7 – Hearings*

Section 1 (*Requests for a Hearing*) states, in part, that if an Interested Person's written statement contests FICC's determination that such Interested Person has violated

an EPN Rule or EPN Procedure, the statement must specifically admit or deny each violation alleged and detail the reasons why the EPN Rules or EPN Procedures alleged to have been violated are being contested. FICC is proposing to amend this sentence to delete all references to the EPN Procedures.

v. *Proposed Changes to EPN Rule 11 – EPN Procedures*

FICC is proposing to delete this rule its entirety because FICC does not maintain EPN Procedures. EPN Rule 11 of Article V empowers FICC to adopt EPN Procedures as FICC “deems necessary or desirable.”<sup>15</sup> It appears that when FICC instituted the EPN Service and the related EPN Rules, EPN Procedures were not adopted at that time.<sup>16</sup> Since FICC does not currently maintain EPN Procedures, FICC has decided to conform the EPN Rules to its practices by deleting this Rule, the defined term from EPN Rule 1 of *Article I* (as stated above), and related references throughout the EPN Rules because this inchoate power is itself not necessary. FICC would reserve this rule for future use and this rule would be entitled “Reserved for Future Use.”

vi. *Proposed Changes to EPN Rule 12 – Waivers, Etc.*

EPN Rule 12 states, in part, that the time fixed by the EPN Rules, the EPN Procedures or any regulations issued by FICC for the doing of any act may be extended, waived or suspended by the Board or by any officer of FICC having a rank of Vice President or higher whenever such extension, waiver or suspension is necessary or expedient. FICC is proposing to amend this sentence to delete all references to EPN Procedures and delete all references to regulations issued by FICC. FICC is also

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<sup>15</sup> See supra note 3.

<sup>16</sup> See supra note 13.

proposing to delete the reference to “Vice President” and replace it with “Executive Director” because FICC no longer utilizes the Vice President title. This category of officers is currently referred to as Executive Directors.

*vii. Proposed Changes to EPN Rule 17 – Forms*

EPN Rule 17 states, in part, that any information required to be delivered to FICC by use of any such forms may be delivered by the use of any media, as shall be prescribed in the EPN Procedures or by FICC from time to time. FICC is proposing to delete the reference to EPN Procedures. In the event that FICC requires that a particular form should be delivered by use of any media, it is FICC’s existing practice to provide this information directly to the affected EPN User. To the extent that such requirement is applicable to a group or category of EPN Users, such EPN Users are made aware of FICC’s requirements because FICC announces such information through important notices, available at <http://www.dtcc.com/legal/important-notice>.

**(3) Proposed Changes to Provide Enhanced Transparency to the EPN Rules**

FICC is proposing to amend the EPN Rules to provide transparency to various provisions in the EPN Rules. The proposed changes would help ensure that the EPN Rules are clear and accurate. The proposed changes reflect MBSD’s existing practices and FICC believes that these changes would help EPN Users better understand their rights and obligations under the EPN Rules. The proposed changes are described in detail below.

**a. Article I – Definitions and General Provisions**

*Proposed Changes to EPN Rule 1 – Definitions*

FICC is proposing to amend the term “Message” to delete the reference to EPN Procedures. FICC would define this term as all electronic messages sent and received by an EPN User through the EPN Service.

**b. Article II – Messages Processed by the Corporation**

*i. Proposed Changes to EPN Rule 1 – Accounts*

Section 2 (*Limitations*) states that FICC may specify in the EPN Procedures that certain Messages between EPN Users are not eligible for the EPN Service. FICC is proposing to delete the reference to EPN Procedures and amend this section to state that certain Messages may be ineligible if FICC determines that such Messages are not submitted in a manner that is consistent with the communication links, formats, timeframes, and deadlines established by FICC.

Currently, an EPN User is informed of the requisite communication links, formats, timeframes, and deadlines when such EPN User’s application has been approved by MBSD. This information is communicated to all approved applicants during the membership onboarding process. The communication links and formats are also available in MBSD’s implementation guidelines at <http://www.dtcc.com/clearing-services/ficc-mbsd/ficc-mbsd-user-documentation>. The timeframes and deadlines are available at <http://www.dtcc.com/~media/Files/Downloads/Clearing-Services/FICC/MBSD/MBSD-Clearing-Schedules-and-Timeframes.pdf>.

*ii. Proposed Changes to EPN Rule 2 – Reports*

Section 1 (*Availability of Reports*) states that the Message Detail Report and the Message Summary Report are available at a time specified in the EPN Procedures. FICC

is proposing to delete the reference to EPN Procedures and amend this section to state that these reports would be available at a time specified in the time schedule posted on FICC's website. This proposed change refers to the timeframes available at <http://www.dtcc.com/~media/Files/Downloads/Clearing-Services/FICC/MBSD/MBSD-Clearing-Schedules-and-Timeframes.pdf>.

Section 2 (*Message Detail Report*) states that the Message Detail Report shall list the contents of each Message as described in the EPN Procedures. FICC is proposing to delete the reference to EPN Procedures and amend this section to state that for each Eligible Security, the Message Detail Report would include, but would not be limited to, the pool number, original face value, current face value, maturity date, pool factor, CUSIP Number, issue date, principal and interest, and total net money. In connection with this change, FICC is proposing to amend *Article I*, EPN Rule 1 (Definitions) to include a defined term for "CUSIP Number." This term would be defined as the Committee on Uniform Securities Identification Procedures identifying number for an EPN Eligible Security. The proposed change to this section would be consistent with the information that is currently included in the Message Detail Report.

Section 3 (*Message Summary Report*) states that the Message Summary Report shall list the contents of each Message as described in the EPN Procedures. FICC is proposing to delete the reference to EPN Procedures and amend this section to state that for each Eligible Security, the Message Summary Report would include, but would not be limited to, the total original face value, total net money, CUSIP Number, and summary of the number and type of Messages. The proposed change to this section would be

consistent with the information that is currently included in the Message Summary Report.

Section 5 (*Good Delivery; Time Stamps*) states that each EPN Message shall include one or more time stamps, one of which will include a good delivery time stamp as described in the EPN Procedures. FICC is proposing to delete the reference to “EPN” in the term “EPN Message” because “EPN Message” is not a defined term, however, “Message” is a defined term. FICC is also proposing to delete the reference to EPN Procedures. FICC is also proposing to amend this section to state that the good delivery time stamp would be referred to as “T2” and that the application of this time stamp would determine good delivery among EPN Users pursuant to the SIFMA Guidelines. The proposed change would also state that the remainder of the time stamps would be for the EPN Service’s operational, processing, and reporting purposes.<sup>17</sup>

In accordance with the SIFMA Guidelines, pool sellers use the EPN Service to transmit pool information in real-time to their pool buyer counterparties. Two Business Days prior to the established settlement date of to-be-announced settlement obligations (known as “48-Hour Day”), pool sellers that have an obligation to deliver pools to pool buyers must submit pool information that such pool sellers intend to allocate in satisfaction of their settlement obligation. This notification must occur by 3:00 p.m. on 48-Hour

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<sup>17</sup> Each Message reflects additional time stamps (e.g., T1, T3, T4, and T5) that are solely for FICC’s operational, processing and reporting purposes. T1 represents the time when the Message is received by the EPN Service for processing; T3 represents the time when the EPN Service’s Message Processor sends the Message to the Outbound Table; T4 represents the time when the Message Processor archives the Message; and T5 represents the time when the EPN Service’s Output Formatter writes the Message to the Outbound Table. The Message Processor, Outbound Table and the Output Formatter are operational components of the EPN Service.



Day.<sup>18</sup> The 3:00 p.m. cut-off time establishes that good delivery has occurred for purposes of the established settlement date – meaning that, if a pool seller submits its pool information in a Message by the 3:00 p.m. cut-off time on 48-Hour Day, then the pool buyer is obligated to accept the mortgage pools on the settlement date. In the event that the pool seller’s notification does not meet the 3:00 p.m. deadline, the pool buyer will determine whether it is willing to accept the pools subsequent to the settlement date, and either the pool seller or the pool buyer will finance the mortgage pools until the delivery date. The delivery of the mortgage pools and any financing arrangement occur outside of the EPN Service.

Because the timing of each Message is important, the EPN system applies time stamps to each Message that is processed through the EPN Service. The time stamp designated as T2 establishes whether the pool seller has met good delivery – meaning, the 3:00 p.m. cut-off time on 48-Hour Day.<sup>19</sup>

In the event that the pool seller decides to substitute a mortgage pool for which pool information has already been provided, the pool seller must submit a cancel and correct Message by 12:15 p.m. on any Business Day prior to the delivery of the mortgage pool.<sup>20</sup> Upon receipt of the pool seller’s Message, the EPN system transmits the Message to the pool buyer. The T2 time stamp on the Message received by the pool buyer

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<sup>18</sup> See MBSD’s timeframes, available at <http://www.dtcc.com/~media/Files/Downloads/Clearing-Services/FICC/MBSD/MBSD-Clearing-Schedules-and-Timeframes.pdf>; and see the SIFMA Guidelines, Chapter 7, *supra* note 9.

<sup>19</sup> In the event that a pool seller fails to submit its pool information, such pool seller’s obligation to submit the pool information remains ongoing until the pool information is submitted.

<sup>20</sup> *Supra* note 18.

establishes whether good delivery has occurred for purposes of the pool seller's pool substitution. In the event that the T2 time stamp on the pool buyer's Message is after 12:15 p.m., FICC is responsible for financing the mortgage pools associated with the Message until the delivery date so long as the T2 time stamp on the pool seller's Message reflects a time that is at or before 12:15 p.m. As set forth in subsection (4) below, FICC is proposing to establish one good delivery T2 time stamp that reflects the same processing time on the pool seller's Message and the pool buyer's Message, respectively. This T2 time stamp would determine whether the pool seller's cancel and correct Message has met the good delivery requirement.

**c. Article III – EPN Users**

*Proposed Changes to EPN Rule 5 – Use of EPN Service*

EPN Rule 5 states, in part, that all EPN Users will use the EPN Service for EPN Eligible Securities in a manner set forth in the EPN Procedures and that this shall be accomplished by providing (for each Message that an EPN User sends or receives) the pricing and other descriptive information, in the manner, and by the cut-off times, specified in the EPN Procedures. FICC is proposing to delete the references to EPN Procedures and amend this rule to state that the EPN User will use the EPN Service in a manner set forth in the EPN Rules and that this shall be accomplished by providing (for each Message that an EPN User sends or receives) the pricing and other descriptive information, in the manner, and by the times, specified on FICC's website. This information is communicated to all approved applicants during the membership onboarding process. The information that an EPN User is required to include in a Message is available at <http://www.dtcc.com/clearing-services/ficc-mbsd/ficc-mbsd-user->

[documentation.aspx](#), and the timeframes are available at

<http://www.dtcc.com/~media/Files/Downloads/Clearing-Services/FICC/MBSD/MBSD-Clearing-Schedules-and-Timeframes.pdf>.

**(4) Proposed Change to the EPN System’s Processing of the Good Delivery T2 Time Stamp for Pool Substitutions**

As described above in subsection (3)b.ii., if a pool seller decides to substitute a mortgage pool for which pool information has already been provided, the pool seller must submit a cancel and correct Message by 12:15 p.m. on any Business Day prior to the delivery of the mortgage pool. Upon receipt of the pool seller’s Message, the EPN system applies a T2 time stamp to the pool seller’s Message to reflect the time that the EPN system received the pool seller’s Message. The EPN system also applies a T2 time stamp to the pool buyer’s Message to reflect the time that the pool buyer received the pool seller’s Message. The T2 time stamp on the pool buyer’s Message establishes whether good delivery has occurred for purposes of the pool seller’s pool substitution. In the event that the T2 time stamp on the pool buyer’s Message reflects a time that is after 12:15 p.m., FICC is responsible for financing the mortgage pools that are associated with the Message until the next Business Day.<sup>21</sup>

FICC is proposing to establish one good delivery T2 time stamp that reflects the same processing time on the pool seller’s Message and the pool buyer’s Message, respectively. This time stamp would determine whether the 12:15 p.m. cut-off time has been met for purposes of establishing good delivery of the pool buyer’s pool substitution. As a result of this change, in the event that the T2 time stamp reflects a time that does not

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<sup>21</sup> To date, all Messages have met the established good delivery requirements, and as a result, FICC has not had to finance any mortgage pools.

meet the 12:15 p.m. cut-off time, the financing of the mortgage pools, if any, would be the responsibility of the counterparties to the Message as determined by such parties in accordance with the SIFMA Guidelines. FICC is proposing this change because it would be consistent with the SIFMA Guidelines and FICC believes that the parties to the Message are best positioned to ensure that the Message meets the good delivery requirements.

The proposed change would be consistent with FICC's proposal to amend Section 5 (Good Delivery; Time Stamps) in EPN Rule 2 (Reports) of *Article II (Messages Processed by the Corporation)* (as referenced above in subsection (3)b.ii.) to state that the good delivery time stamp would be referred to as "T2" and the application of this time stamp would determine good delivery among EPN Users pursuant to the SIFMA Guidelines.

The proposed change would not affect FICC's guarantee and novation of transactions submitted by Clearing Members through MBSD's Clearing System.

#### **(5) Implementation of the Proposed Rule Changes**

The proposed changes to (i) correct the EPN Rules (as described above in subsection (2)) and (ii) provide transparency to the EPN Rules (as described above in subsection (3)) would become operative on the date of the Commission's approval of this proposed rule change.

The proposed change to the EPN system's processing of the good delivery T2 time stamp for pool substitutions (as described above in subsection (4)) would become operative within 45 Business Days after the date of the Commission's approval of this proposed rule change. FICC would add a legend to *Article II (Messages Processed by the*

*Corporation*) that identifies the implementation date of the proposed change to Section 5 of EPN Rule 2.

2. Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 (“Act”) requires, in part, that the EPN Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>22</sup>

The proposed changes to (i) correct the EPN Rules (as described above in subsection (2) of Item II.(A)1) and (ii) provide transparency to the EPN Rules (as described above in subsection (3) of Item II (A)1) would help to ensure that the EPN Rules are accurate and clear to EPN Users. When EPN Users better understand their rights and obligations regarding the EPN Service, such EPN Users are more likely to act in accordance with the EPN Rules, which FICC believes would promote the prompt and accurate clearance and settlement of securities transactions. As such, FICC believes that the proposed changes to correct and provide transparency to the EPN Rules would be consistent with Section 17A(b)(3)(F) of the Act.<sup>23</sup>

The proposed change to established one good delivery T2 time stamp (as described above in subsection (4) of Item II (A)1) would be consistent with the SIFMA Guidelines and would further encourage EPN Users to adhere to the 12:15 p.m. deadline for substitutions. Because the proposed change would be consistent with the SIFMA Guidelines, which reflect industry best practices, FICC believes that the proposed change would help the seamless processing of transactions through the EPN Service. As a result,

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<sup>22</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>23</sup> Id.

FICC believes the proposed change further promotes the prompt and accurate clearance and settlement of securities transactions. As such, FICC believes that the proposed change would be consistent with Section 17A(b)(3)(F) of the Act.<sup>24</sup>

Rule 17Ad-22(e)(23)(i) under the Act requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for publicly disclosing all relevant rules and material procedures.<sup>25</sup> As described above, the proposed rule changes to (i) correct the EPN Rules (as described above in subsection (2) of Item II (A)1), (ii) provide transparency to the EPN Rules (as described above in subsection (3) Item II (A)1) and (iii) amend the EPN system's processing of T2 time stamps for pool substitutions would better disclose all relevant and material aspects of the EPN Service. Therefore, FICC believes the proposed changes to correct and provide transparency to the EPN Rules are consistent with Rule 17Ad-22(e)(23)(i).<sup>26</sup>

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe the proposed rule changes to (i) correct the EPN Rules (as described above in subsection (2) of Item II(A)1) and (ii) provide transparency to the EPN Rules (as described above in subsection (3) of Item II(A)1) would impact competition. The proposed rule changes would help to ensure that the EPN Rules remain clear and accurate. In addition, the changes would facilitate EPN Users' understanding of the EPN Rules and their obligations thereunder. These changes would apply equally to all EPN Users and would not affect FICC's operations or the rights and obligations of

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<sup>24</sup> Id.

<sup>25</sup> 17 CFR 240.17Ad-22(e)(23)(i).

<sup>26</sup> Id.

EPN membership. As such, FICC believes the proposed rule changes to correct and provide transparency to the EPN Rules would not have any impact on competition.

FICC believes that the proposed change to establish one good delivery T2 time stamp (as described above in subsection (4) of Item II(A)1) could have an impact on competition among the parties to the Message because either the pool seller or the pool buyer (as determined by the parties in accordance with the SIFMA Guidelines) would be responsible for financing the substituted mortgage pools associated with a Message that does not meet the good delivery requirements. FICC does not believe that the burden on competition would be significant because it would similarly affect both counterparties to a cancel and correct Message that does not meet the good delivery requirements in accordance with the SIFMA Guidelines.

FICC believes that any burden on competition that is created by the proposed change would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>27</sup> FICC believes that the proposed change would be necessary in furtherance of the Act because it would be consistent with the SIFMA Guidelines, which reflect best practices. The SIFMA Guidelines require either the pool seller or the pool buyer to take responsibility of the mortgage pools in the event that a cancel and correct Message does not meet good delivery requirements. FICC believes the proposed change would be appropriate in furtherance of the Act because EPN Users are parties to each Message, aware of the good delivery requirements and best positioned to ensure that cancel and correct Messages meet the good delivery requirements. As a result, FICC believes any burden on competition that is created by

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<sup>27</sup> 15 U.S.C. 78q-1(b)(3)(I).

the proposed rule change would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>28</sup>

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal.

FICC will notify the Commission of any written comments received by FICC.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove 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

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<sup>28</sup>

Id.



- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2018-007 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FICC-2018-007. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-FICC-2018-007 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>29</sup> 17 CFR 200.30-3(a)(12).