

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69709; File No. SR-FICC-2013-03)

June 6, 2013

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change to Amend Mortgage-Backed Securities Division Rules Relating to Allocation of an Indemnity Claim Made in Connection with the Use of the Federal Reserve's National Settlement Service

I. Introduction

On April 15, 2013, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2013-03 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 29, 2013.³ The Commission received no comment letters. This order approves the proposed rule change.

II. Description

FICC's Government Securities Division ("GSD") and Mortgage-Backed Securities Division ("MBSD") each use the Board of Governors of the Federal Reserve's ("FRB") National Settlement Service ("NSS") for Funds-Only Settlement⁴ and Cash Settlement⁵ purposes,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 69434 (April 23, 2013), 78 FR 25121 (April 29, 2013).

⁴ "Fund-Only Settlement Amount" is defined under Rule 1 of GSD's Rulebook as the net dollar amount of a netting member's obligation, calculated pursuant to GSD's Rule 13, either to make a funds-only payment to GSD or to receive a funds-only payment from GSD. See GSD Rule 13 for the rules related to funds-only settlement.

⁵ "Cash Settlement" is defined under Rule 1 of MBSD's Clearing Rules as the payment

respectively. GSD's Rule 13 and MBSB's Rule 11 address the situation where the FRB makes an indemnity claim in connection with the use of the NSS service by FICC. Pursuant to the GSD and MBSB rules, if FICC receives an FRB indemnity claim, FICC will apportion the entire liability to the GSD netting members or MBSB clearing members, as applicable, for whom the settling bank was acting at the time.⁶ If such amounts are not sufficient to fully satisfy the FRB indemnity claim, each of the GSD and MBSB rules currently provide different directives as to how FICC should handle the remaining loss. The GSD rules state that FICC will treat the remaining loss as an "Other Loss," as defined in GSD Rule 4, and allocate accordingly.⁷ In contrast, MBSB Rule 11, Section 5(o), states that FICC will allocate the remaining loss among all MBSB clearing members in proportion to their relative use of the MBSB services (based on fees).

The purpose of the rule change is to correct MBSB's Rule 11 in order to accurately reflect the correct manner in which FICC should allocate an indemnity claim made in connection with the use of the FRB's NSS. The MBSB provision in Rule 11 was drafted prior to the MBSB becoming a central counterparty and adopting a loss mutualization process similar to the GSD process. When FICC filed its rule change to provide guaranteed settlement and central

each business day by MBSB to a member or by a member to MBSB. See MBSB Rule 11 for the rules related to cash settlement.

⁶ See GSD's Rule 13 Section 5(o) and MBSB Rule 11, Section 5(o).

⁷ Rule 4(f) of GSD's Rulebook.

counterparty services,⁸ which among other things established the loss mutualization process, the MBSD NSS indemnity provision requiring the current loss allocation process was inadvertently overlooked and therefore not updated during FICC's efforts to harmonize the GSD and MBSD rules. Accordingly, the rule change corrects this oversight by revising MBSD Rule 11, Section 5(o), to reflect that all remaining losses from a FRB indemnity claim should be treated as an "Other Loss" as defined in MBSD Rule 4 and allocated accordingly.

III. Discussion

Section 19(b)(2)(C) of the Act⁹ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.¹⁰ The Commission finds that FICC's rule change should facilitate the prompt and accurate clearance and settlement of securities transactions by correcting MBSD's rules to accurately reflect the loss allocation procedures in connection with NSS and to ensure that there is consistent treatment of such losses between the MBSD and GSD rules.

⁸ Exchange Act Release No. 66550 (March 9, 2012), 77 FR 15155 (March 14, 2012) [File No. SR-FICC-2008-01] (order approving amended proposed rule change to allow MBSD to provide guaranteed settlement and central counterparty services).

⁹ 15 U.S.C. 78s(b)(2)(C).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly with the requirements of Section 17A of the Act, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-FICC-2013-03) be and hereby is approved.¹²

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

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Deputy Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 17 CFR 200.30-3(a)(12).