

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96061; File No. SR-FICC-2022-007)

October 13, 2022

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify and Update GSD Rules, MBSD Rules and EPN Rules

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 October 7, 2022, 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. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4) thereunder.⁴ 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 Fixed Income Clearing Corporation (“FICC”) consists of modifications to the FICC Government Securities Division (“GSD”) Rulebook (“GSD Rules”), the FICC Mortgage-Backed Securities Division (“MBSD”) Clearing Rules (“MBSD Rules”) and the Electronic Pool Notification (“EPN”) Rules of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4).

MBSD (“EPN Rules,” and together with the GSD Rules and the MBSD Rules, the “Rules”).

Specifically, the proposed rule change would (i) clarify GSD Rules, MBSD Rules and EPN Rules concerning admission to FICC premises, (ii) update EPN Rules related to FICC’s maintenance of fidelity insurance bond, (iii) remove outdated EPN Rules related distribution facilities, and (iv) clarify GSD Rules and MBSD Rules concerning Settling Banks’ ability to refuse to settle. The proposed changes are designed to clarify and update certain sections of the Rules and enhance the transparency of those Rules by conforming, as appropriate, provisions in certain sections of the Rules with similar rules of FICC’s affiliates, as described in greater detail below.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.

⁵ Capitalized terms not otherwise defined herein are defined in the MBSD Rules, GSD Rules, and the EPN Rules, as applicable, available at <http://www.dtcc.com/legal/rules-and-procedures>.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FICC is proposing to clarify and update the Rules and enhance the transparency of those Rules through modifications related to (i) credentials required to access the premises of FICC, (ii) FICC’s maintenance of a fidelity insurance bond, (iii) existence of distribution facilities of FICC, and (iv) clarification of Settling Banks’ and Cash Settling Banks’ ability to refuse to settle for itself.

First, the proposed changes would enhance the transparency of these Rules by providing participants of FICC with updated, clear information. Second, the proposed changes would simplify and update these Rules by removing information that either (a) describes internal processing and does not provide participants with important information regarding any applicable service, or (b) no longer describes FICC’s current operations. Finally, the proposed changes would conform those Rules with similar rules of FICC affiliates, The Depository Trust Company (“DTC”) and National Securities Clearing Corporation (“NSCC,” and, together with FICC and DTC, the “Clearing Agencies”), where appropriate.

The proposed changes are discussed in detail below.

(i) Admission to FICC Premises

First, FICC is proposing to revise GSD Rule 27 (Admissions to Premises of the Corporation, Powers of Attorney, ETC.), MBSD Rule 20 (Admissions to Premises of the Corporation, Powers of Attorney, ETC.) and EPN Rule 4 of Article III,⁶ (Admission to

⁶ All references to “Articles” herein shall refer to Articles of the EPN Rules, supra note 5.

Premises of Corporation; Powers of Attorney), which provide for the approval and subsequent revocation of access to FICC's premises by a participant's employee, or a person to whom a power of attorney or other authorization has been given to act for a participant, in connection with the work of FICC. The proposed changes to these Rules would add information regarding the need for any representative of a participant to prominently display credentials to gain entry and remain on the premises of FICC. The proposed rule change of EPN Rule 4 of Article III also clarifies the need to provide FICC with immediate notice of a change of circumstances resulting in the revocation of such credentials. The proposed changes further outline FICC's processes for allowing participants onto FICC's premises and, therefore, enhance the transparency of these Rules. The proposed change would allow FICC to continue to monitor and ensure the safety of its employees and guests, while clarifying expectations for participants and representatives of participants while on FICC premises.

In addition, the proposed rule change would conform GSD Rule 27, MBSD Rule 20 and EPN Rule 4 of Article III with DTC Rule 17 and NSCC Rule 27.⁷ By conforming the descriptions in similar rules across the Clearing Agencies where there is no difference in FICC's processes and therefore no need for differing language, the proposed changes would improve predictability and transparency for visitors of FICC.

(ii) *Maintenance of Fidelity Bond*

Next, FICC is proposing to revise EPN Rule 6, Section 3 of Article V (*Fidelity Bond*) which currently provides for FICC's maintenance of fidelity bond coverage in an

⁷ The DTC Rules and NSCC Rules are available on DTCC's public website, available at <https://www.dtcc.com/legal/rules-and-procedures>.

amount of not less than \$10,000,000. FICC is proposing to amend this rule to replace the existing language with a more general description of FICC's obligation to maintain appropriate insurance, including fidelity bonds, related to its business, to provide access to such insurance policies or contracts to EPN Users and to notify each EPN User and the Commission of any material reduction in such insurance coverage. FICC is proposing to replace the current language of this rule with a more general description because FICC does not believe the current rule provides EPN Users with important information regarding their rights and obligations, or FICC's rights and obligations, in connection with this obligation to maintain insurance coverage. In general, FICC maintains a significantly higher amount of fidelity bond coverage than that required in this rule.

In addition, the proposed changes would conform the language of EPN Rule 6, Section 3 of Article V with those of MBSD Rule 25, DTC Rule 14, and NSCC Rule 34 and GSD Rules 34.⁸ By conforming the descriptions in similar rules across the Clearing Agencies where there is no difference in FICC's processes and therefore no need for differing language, the proposed changes would improve predictability and transparency for firms that are participants with multiple Clearing Agencies.

(iii) *Distribution Facilities*

FICC is also proposing to change the EPN Rules by deleting EPN Rule 20 of Article V (Distribution Facilities) because it does not currently maintain such facilities and has no plans to do so. Therefore, this proposed change would reflect FICC's current processes and improve the clarity the EPN Rules.

⁸ Id.

EPN Rule 20 of Article V currently states that FICC may, if it deems necessary, establish distribution facilities “for the distribution of papers, documents and other material incidental to the ordinary course of business” to be used by EPN Users. To FICC’s knowledge, FICC has not utilized such option and based on current FICC processes and procedures, FICC does not believe it would be necessary to establish such facilities in the future. As such, the proposed change would not impede any EPN Users from engaging in the services or have an adverse impact on such firms.

(iv) Settlement by Settling Banks and Cash Settling Banks

Lastly, FICC is proposing to revise GSD Rule 13, Section 5(b) (*Funds-Only Settlement Amount Payment Process*) and MBSD Rule 11, Section 9(b) (*Cash Settlement*) to clarify that a Settling Bank and a Cash Settling Bank, respectively, may not refuse to settle for itself.

GSD Rule 13, Section 5(b) currently provides that Funds-Only Settling Banks must acknowledge to FICC by a certain time their intention to either settle their Net Funds-Only Settlement Figures or their refusal to settle for one or more Netting Members. MBSD Rule 11, Section 9(b) currently provides that Cash Settling Banks must acknowledge to FICC by a certain time their intention to either settle their Total Debit Cash Balance Figures and Total Credit Cash Balance Figures or their refusal to settle for one or more particular Member.

The proposed change to these rules, would clarify that a Settling Bank and a Cash Settling Bank cannot refuse to settle for itself. The proposed change would codify a longstanding practice and understanding among participants of the Clearing Agencies. As Netting Members and Members have an ongoing responsibility to settle their own obligations, a Netting Member or Member who serves as a Settling Bank or Cash Settling

Bank, respectively, would carry the same responsibility on its own behalf. More specifically, GSD Rule 13, Section 5(e) states that if the Funds-Only Settling Bank does not acknowledge, or sends a refusal regarding, the Netting Member's Funds-Only Settlement Amount that is a debit or if the Funds-Only Settling Bank acknowledges the amount but then does not settle the payment, the Netting Member shall remain obligated, pursuant to the Rules, to pay such Amount by the payment deadline.⁹ MBSD Rule 11, Section 9(e) states that if the Cash Settling Bank does not acknowledge, or sends a refusal regarding, the Member's Cash Settlement amount that is a debit or if the Cash Settling Bank acknowledges the amount but then does not settle the payment, the Member shall remain obligated, pursuant to the Rules, to pay such Cash Settlement amount by the payment deadline.¹⁰ Therefore, if Settling Bank or a Cash Settling Bank is a Netting Member or a Member, respectively, it would be subject, as a Netting Member or Member, to the obligation to settle on its own behalf pursuant to the obligations of Netting Members and Member under the Rules cited above. While a Settling Bank and Cash Settling Bank may refuse to settle for another participant that has engaged it as a settling bank, in which case, the participant's obligation to settle on its own behalf would be triggered, it cannot refuse to settle for itself.

The proposed change would clarify and increase transparency of these Rules. In addition, the proposed change would conform GSD Rule 13, Section 5(b) and MBSD Rule 11, Section 9(b) with DTC Rule 9D and NSCC Rule 55, which state in clearer terms that settling banks cannot refuse to settle on its own behalf.

⁹ See supra note 5.

¹⁰ Id.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.¹¹

FICC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions by FICC, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.¹² Specifically, the proposed rule changes concerning *Admission to FICC's Premises* and *Settlement by Settling Banks and Cash Settling Banks* would update and clarify these Rules by codifying settled processes and provide transparency thereby allowing participants to conduct their business more efficiently and effectively in accordance with the Rules, which FICC believes would promote the prompt and accurate clearance and settlement of securities transactions. The proposed rule change regarding *Distribution Facilities* would remove an outdated rule related to inactive services in reference to distribution facilities. This proposed change is designed to improve the accuracy, clarity, and transparency of the Rules and thereby allow participants to conduct their business more efficiently and effectively in accordance with the Rules, which FICC believes would promote the prompt and accurate clearance and settlement of securities transactions. The proposed rule change related to FICC's *Maintenance of Fidelity Bond* is designed to simplify and update this rule by removing information that describes internal processes and does not

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² Id.

provide participants with important information regarding FICC's maintenance of appropriate insurance coverage.

By updating, clarifying and improving the transparency of the Rules, the proposed changes would allow participants to better understand their rights and obligations under the Rules. As such, FICC believes the proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, consistent with the requirements of Section 17A(b)(3)(F).¹³

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

FICC does not believe that the proposed rule changes would have any impact on competition, because the proposed changes to (1) enhance transparency of the Rules, (2) change language that does not provide participants with important information regarding any service, (3) update the Rules to reflect current practice, and (4) conform the Rules across FICC's divisions and the Clearing Agencies, where appropriate, would not materially alter the respective rights or obligations of FICC or its participants. These proposed changes would allow participants to better understand FICC's internal processes by adding information to the Rules, update the Rules by removing services that are not provided and establish conformity across FICC's divisions and Clearing Agencies, where applicable. As such, the proposed changes would not impede participants from engaging in the services or have an adverse impact on any participants.

¹³ Id.

Therefore, FICC believes the proposed rule changes would not have any impact on competition.

(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. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submitcomments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

FICC reserves the right not to respond to any comments received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹⁴ of the Act and paragraph (f)¹⁵ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FICC-2022-007 on the subject line.

Paper Comments:

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

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-FICC-2022-007. 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-2022-007 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.¹⁶

J. Matthew DeLesDernier,
Deputy Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).