

**RAILROAD RETIREMENT BOARD****Computer Matching and Privacy Protection Act of 1988; Report of Matching Program: RRB and State Agencies**

**AGENCY:** U.S. Railroad Retirement Board (RRB).

**ACTION:** Notice of a renewal of an existing computer matching program due to expire on February 10, 2015.

**SUMMARY:** The Privacy Act, as amended, requires the RRB to issue a public notice of its use and intent to use, information obtained from state agencies in ongoing computer matching programs regarding individuals who received benefits under the Railroad Unemployment Insurance Act.

The information received through the computer matching programs may consist of either: (1) A report of unemployment or sickness payments made by the state for the same period that benefits were paid by the RRB, or (2) a report of wages paid to an individual, and the names and addresses of employers who reported those wages to the state for the same period that benefits were paid by the RRB.

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Unemployment Insurance Act of the use made by the RRB of the information obtained from state agencies by means of a computer match.

**DATES:** Submit comments on or before March 2, 2015.

**ADDRESSES:** Address any comments concerning this notice in writing to the Secretary to the Board, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092.

**FOR FURTHER INFORMATION CONTACT:** Mr. Timothy S. Grant, Chief Privacy Officer, U.S. Railroad Retirement Board, 844 North Rush Street, Attn: BIS-IRMC, Chicago, Illinois 60611-2092.

**SUPPLEMENTARY INFORMATION:****A. General**

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed, and by adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) further amended the Privacy Act regarding protection for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when matching records in a system of records with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

- (1) Negotiate written agreements with the other agency or agencies participating in the matching programs;
- (2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;
- (3) Publish notice of the computer matching program in the **Federal Register**;
- (4) Furnish reports about matching programs to Congress and Office of Management and Budget;
- (5) Notify beneficiaries and applicants that their records are subject to matching; and
- (6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

**B. RRB Computer Matches Subject to the Privacy Act**

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

**C. Notice of Computer Matching Program: RRB With State Agencies**

*1. Name of Participating Agencies:* The Railroad Retirement Board and agencies of all 50 states which provide unemployment or sickness benefits.

*2. Purpose of the Match:* To identify individuals who have improperly collected benefits provided by the RRB under the Railroad Unemployment Insurance Act while earning remuneration in non-railroad employment or while collecting unemployment or sickness benefits paid by a state agency.

*3. Authority for Conducting the Match:* The Social Security Act (42 U.S.C. 503(c)(1)), and Railroad Unemployment Insurance Act (45 U.S.C. 231f(b) and 362(f)). Disclosures under this agreement are made in accordance with the Privacy Act, as amended (5 U.S.C. 552a(b)(3)) and in compliance with the matching procedures in the Privacy Act (5 U.S.C. 552a(o), (p), and (r)).

*4. Categories of Records and Individuals Covered:* All recipients of benefits under the Railroad Unemployment Insurance Act during a given period who reside in the states with which the RRB has negotiated a computer matching program agreement. Records furnished by the states are

covered under Privacy Act system of records RRB-21, Railroad Unemployment and Sickness Insurance Benefit System, which was published in the **Federal Register** (FR) on July 26, 2010 (75 FR 43725).

*5. Inclusive Dates of the Matching Program:* This computer matching program is effective February 10, 2015 through August 10, 2017. Before becoming effective the following notice periods must have lapsed: 30 days after publication in the **Federal Register** and 40 days after notice of the matching program sent to Congress and OMB. The computer matching program is valid for 18 months from the effective date and, if both agencies meet certain conditions, the RRB may grant a one-time extension of another 12 months. The number of matches conducted with each state during the period of the match will vary from state to state, depending on whether the computer matching agreement provides for matches to be conducted quarterly or every six months.

*6. Procedure:* The RRB will furnish the state agency a file of records. The data elements will consist of beneficiary identifying information, such as name and Social Security Number (SSN), as well as the overall period during which the individual received benefits under the Railroad Unemployment Insurance Act. The state agency will match the identifying information.

If the matching operation reveals that the individual who had received benefits under the Railroad Unemployment Insurance Act also received either unemployment or sickness insurance benefits from the state for any days in the period, the state agency will notify the RRB. Depending on arrangements made between the two jurisdictions, and, in the case of state sickness benefits, on the applicable state law, either the RRB or the state agency will attempt to recover the amount of the duplicate payments.

If the matching operation reveals that wages had been reported for the individual during the requested period, the state will notify the RRB of this fact and furnish a breakdown of the wages, as well as the name and address of each employer who reported earnings for the individual. The RRB will then contact each employer who reported earnings for the individual for the given period. Only if the employment is verified will the RRB take action to recover the overpayment. If the RRB benefits had been paid under the Railroad Unemployment Insurance Act, recovery is limited to payments made for those days on which the individual was gainfully employed.

7. *Other information:* The notice we are giving here is in addition to any individual notice. We will file a report with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

Dated: January 13, 2015.

By authority of the Board.

**Martha P. Rico,**

*Secretary to the Board.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74046; File No. SR-FICC-2014-06]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Amend the Rules of the Government Securities Division and the Mortgage-Backed Securities Division on Insolvency and Ceasing To Act

January 13, 2015.

#### I. Introduction

On November 25, 2014, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-FICC-2014-06 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> The proposed change was published for comment in the **Federal Register** on December 12, 2014.<sup>3</sup> The Commission received one comment supporting the proposed rule change.<sup>4</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

The rule change, as proposed, amends the rulebooks of FICC’s Government Securities Division (“GSD”) and FICC’s Mortgage-Backed Securities Division (“MBSD”) to simplify those rules relating to the insolvency of a member and ceasing to act, in order to simplify certain aspects of FICC’s process in a

cease to act situation and provide greater legal certainty for FICC and its members, particularly in an intra-day cease to act situation.

#### A. Background

In connection with lessons learned from a recent close-out simulation exercise conducted by FICC’s parent company, The Depository Trust & Clearing Corporation, in which FICC participated, and a related review of the GSD and MBSD rules, specific challenges were identified relating to the administration of certain aspects of GSD and MBSD insolvency and ceasing to act rule provisions, particularly in an intra-day cease to act situation.

#### B. “Time of Insolvency” and “Cut-Off Time”

GSD and MBSD include in their current insolvency rules<sup>5</sup> and cease to act rules<sup>6</sup> the concept of a “Time of Insolvency,” which is defined to mean the time at which FICC determines to its reasonable satisfaction that a member is “insolvent” within the meaning of GSD Rule 22 or MBSD Rule 16, respectively.

This “Time of Insolvency” concept is distinguished from the time at which FICC ceases to act for a member. The GSD and MBSD rules currently use “Time of Insolvency” as a line of demarcation when determining FICC’s obligations with respect to pending transactions involving the insolvent member. Specifically, transactions with the insolvent member that are not compared or deemed compared in accordance with the GSD or MBSD rules, respectively, prior to the “Time of Insolvency” are not eligible to be part of the close-out process, unless otherwise determined by FICC’s Board of Directors in order to promote orderly settlement.

For a non-insolvency cease to act situation, the GSD rules and the MBSD rules on ceasing to act<sup>7</sup> currently include the concept of a “Cut-Off Time,” which is defined to mean a time specified in advance by FICC in a notice to its members at which it will cease to act for a member. Like the “Time of Insolvency” concept, “Cut-Off Time” is currently used in the GSD rules and the MBSD rules when determining FICC’s obligations with respect to pending transactions involving the defaulted member.

Identifying an exact time at which a member has become “insolvent” for purposes of establishing a “Time of Insolvency” may pose potential challenges for FICC in circumstances where the member is deemed “insolvent” based upon the determination or action of a third party, such as the member’s regulator, supervisory authority or a court of competent jurisdiction. In an intra-day cease to act situation where transaction data is being submitted to FICC in real-time, such potential challenges may create a lack of legal certainty for FICC and its members regarding FICC’s obligations with respect to pending transactions involving the insolvent member. The rule change removes the “Time of Insolvency” concept from the GSD rules and the MBSD rules and instead simply relies on the single time FICC ceases to act for an insolvent member for purposes of determining its obligations with respect to pending transactions involving such insolvent member.

In order to also simplify its process in non-insolvency cease to act situations, the rule change removes the separate “Cut-Off Time” concept from the GSD rules and the MBSD rules, and instead relies on the single time FICC ceases to act for a defaulted member for purposes of determining its obligations with respect to pending transactions involving such defaulted member.<sup>8</sup>

#### C. Transactions Deemed Compared Based Solely on Non-Defaulting Member Data

Currently, the provisions of the GSD’s rules and the MBSD’s rules on ceasing to act,<sup>9</sup> and the related prongs of the “Compared Trade” definition in Rule 1 of the each of GSD’s rules and MBSD’s rules provide that, in the context of FICC ceasing to act for a member, a transaction involving such member that would not otherwise be compared or deemed compared under the GSD rules or the MBSD rules, respectively, may, in certain circumstances, be deemed a compared trade based solely on data submitted by a non-defaulting member. The determination of whether such a

<sup>8</sup> In addition to simplifying FICC’s rules relating to the insolvency of a member and ceasing to act, the rule change more closely aligns the GSD rules and the MBSD rules with the rules of FICC’s affiliate, National Securities Clearing Corporation (“NSCC”). Under its Rule 18 (Procedures for When the Corporation Declines or Ceases to Act), NSCC relies on the time it declines or ceases to act for a member when determining which transactions involving such member will be excluded from its operations, rather than on a separate “Time of Insolvency” or “Cut-Off Time,” as applicable.

<sup>9</sup> GSD Rulebook, Rule 22A; MBSD Rulebook, Rule 17.

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

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

<sup>3</sup> Securities Exchange Act Release No. 73787 (December 8, 2014), 79 FR 73927 (December 12, 2014) (SR-FICC-2014-06).

<sup>4</sup> Letter from “Anonymous,” Office of the Secretary, U.S. Securities and Exchange Commission (Jan. 1, 2015).

<sup>5</sup> FICC, Government Securities Division Rulebook (“GSD Rulebook”), Rule 22; Fixed Income Clearing Corporation, Mortgage-Backed Securities Division Rulebook (“MBSD Rulebook”), Rule 16.

<sup>6</sup> GSD Rulebook, Rule 22A; MBSD Rulebook, Rule 17.

<sup>7</sup> GSD Rulebook, Rule 22A; MBSD Rulebook, Rule 17.