

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89593; File No. SR-FICC-2020-006]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Provide for a Passive Acknowledgement Process and Make Other Changes

August 18, 2020.

#### I. Introduction

On June 19, 2020, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”), 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> proposed rule change SR-FICC-2020-006. The proposed rule change was published for comment in the **Federal Register** on July 7, 2020.<sup>3</sup> The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description of the Proposed Rule Change

FICC proposes to modify its Government Securities Division (“GSD”) Rulebook (“GSD Rules”) and its Mortgage-Backed Securities Division (“MBS”) and together with GSD, each, a “Division”) Clearing Rules (“MSBD Rules,” and together with the GSD Rules, “Rules”)<sup>4</sup> in order to (i) provide for a passive acknowledgement process whereby any settling bank that does not timely acknowledge that it will settle its Funds-Only (Cash) Settlement Figures (as defined below) with FICC (*i.e.*, acknowledge its intention to pay to or collect from FICC), or notify the Settlement Agent (as defined below) of its refusal to settle for one or more

members<sup>5</sup> for which it is the designated GSD Funds-Only Settling Bank or MBS Cash Settling Bank (collectively, “FICC Settling Banks”) and has not otherwise been in contact with the Settlement Agent, would be deemed to have acknowledged its Funds-Only (Cash) Settlement Figures, (ii) codify FICC’s discretion to exclude a FICC Settling Bank’s balance from the National Settlement Service (“NSS”) file in certain circumstances, and (iii) make certain technical and conforming changes.

##### A. Current Funds-Only (Cash) Settlement Process

Each Division provides a standardized, automated method for settling funds-only, for GSD, and cash, for MBS, settlement (collectively, “Funds-Only (Cash) Settlement”) obligations, respectively, between each Division and its respective members’ FICC Settling Banks. Each member designates a FICC Settling Bank to settle its Funds-Only (Cash) Settlement obligations with FICC. Settlement is effected via the NSS.<sup>6</sup>

On each business day, as applicable, each Division calculates either a Funds-Only Settlement Amount or Cash Balance figure, respectively, for each member and reports to each member and its respective FICC Settling Bank a Net Funds-Only Settlement Figure<sup>7</sup> (for GSD) and either a Total Debit Cash Balance Figure or a Total Credit Cash Balance Figure<sup>8</sup> (for MBS)

<sup>5</sup> The use of “members” here refers to any participant that is required to appoint a Funds-Only Settling Bank or Cash Settling Bank, which includes GSD Netting Members, GSD Centrally Cleared Institutional Triparty (“CCIT”) Members, GSD Sponsoring Members, and MBS Clearing Members. References hereinafter to the term “members” shall be used for ease of reference. See GSD Rule 13, Section 4(a) and MBS Rule 3A, Section (a), *supra* note 4.

<sup>6</sup> GSD Rule 13, Section 5(i) and MBS Rule 11, Section 9(i), *supra* note 4. For a general description of the NSS, see National Settlement Service, available at <https://www.frb.org/financial-services/national-settlement-service/index.html>.

<sup>7</sup> Net Funds-Only Settlement Figure means the net amount of the Funds-Only Settlement Amounts of the Netting Members for which a Funds-Only Settling Bank Member is acting. GSD Rule 1, *supra* note 4. For GSD, Funds-Only Settlement Amounts reflect: (i) Changes in the value of securities when they are marked to market, (ii) cash adjustments related to securities trades, (iii) the pass-through of coupon payments for term repos or trade obligations that cross a coupon date, and (iv) other items, such as billing invoices. GSD Rule 13, Section 1, *supra* note 4.

<sup>8</sup> Total Debit Cash Balance Figure means the sum of the Cash Balances which are debits of the Members for which a Cash Settling Bank Member is acting. MBS Rule 1, *supra* note 4. Total Credit Cash Balance Figures means the sum of the Cash Balances which are credits of the Members for which a Cash Settling Bank Member is acting. MBS Rule 1, *supra* note 4. For MBS, Cash

(collectively, “Funds-Only (Cash) Settlement Figures”). The Depository Trust Company (“DTC”) acts as Settlement Agent<sup>9</sup> for both GSD’s funds-only and MBS’s cash settlement process.

Once the FICC Settling Banks receive their Funds-Only (Cash) Settlement Figures from the Settlement Agent, the FICC Settling Banks submit either (1) acknowledgement that they will settle their Funds-Only (Cash) Settlement Figures with FICC or (2) refusal to settle such amounts on behalf of one or more of their respective members.<sup>10</sup> The acknowledgement or refusal submission occurs through a designated terminal system.<sup>11</sup> If all of the FICC Settling Banks submit acknowledgements of their intent to settle, then DTC, as Settlement Agent, would submit the requisite file to the relevant Federal Reserve Bank (“FRB”) for processing through the NSS.<sup>12</sup>

If a FICC Settling Bank notifies the Settlement Agent that the FICC Settling Bank refuses to pay the Funds-Only (Cash) Settlement Figure for a member, then FICC would exclude that member’s amount and the Settlement Agent would provide the FICC Settling Bank with a new Funds-Only (Cash) Settlement Figure that no longer includes the excluded member’s amount. The FICC Settling Bank must then immediately send a message to the Settlement Agent acknowledging the new amount.<sup>13</sup> The Settlement Agent would then submit the requisite file to the FRB for processing through the NSS.

Settlement amounts reflect: (i) The To Be Announced (“TBA”) Transaction Adjustment Payment, (ii) Net Pool Transaction Adjustment Payment, (iii) principal and interest payments for failing net pool settlement obligations (to the extent that they are not handled by the FedWire Securities Service Automated Claims Adjustment Process), and (iv) other items, such as Factor Update Adjustments and billing invoices. MBS Rule 11, Section 7, *supra* note 4.

<sup>9</sup> DTC Settlement Operations acts as the Settlement Agent for GSD and MBS. “Settlement Agent” means the bank or trust company that FICC may, from time to time, designate to act as its agent for purposes of interfacing with NSS for funds-only settlement pursuant to GSD Rule 13 (for GSD) and for Cash Settlement pursuant to MBS Rule 11. GSD Rule 1 and MBS Rule 1, *supra* note 4.

<sup>10</sup> A FICC Settling Bank that settles only for itself may not refuse to settle for itself and, therefore, may opt out of the requirement to acknowledge its Funds-Only (Cash) Settlement Figures. GSD Rule 13, Section 5(b) and MBS Rule 11, Section 9, *supra* note 4. The passive acknowledgement process would not apply to such FICC Settling Banks that have chosen to opt out. See Notice, *supra* note 3, at 40723-24.

<sup>11</sup> GSD Rule 13, Section 5(b) and MBS Rule 11, Section 9(b), *supra* note 4.

<sup>12</sup> GSD Rule 13, Section 5(i) and MBS Rule 11, Section 9(i), *supra* note 4.

<sup>13</sup> GSD Rule 13, Section 5(c) and MBS Rule 11, Section 9(c), *supra* note 4.

<sup>27</sup> 17 CFR 200.30-3(a)(12), (59).

<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. 89193 (June 30, 2020), 85 FR 40723 (July 7, 2020) (SR-FICC-2020-006) (“Notice”).

<sup>4</sup> Capitalized terms not defined herein are defined in the Rules, available at <http://www.dtcc.com/legal/rules-and-procedures>.

The deadline for FICC Settling Banks to acknowledge or refuse is 30 minutes prior to the time at which debits and credits are executed via the NSS.<sup>14</sup> If a FICC Settling Bank does not acknowledge or refuse by this time, the Settlement Agent would use the most recent contact information available to contact the FICC Settling Bank. If the Settlement Agent is unable to contact the FICC Settling Bank or does not receive a response from the FICC Settling Bank as to the acknowledgement or refusal, FICC would determine whether to request an NSS extension while also determining whether to remove the FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file.

Under the current process, failure of a FICC Settling Bank to timely respond to the Settlement Agent after the Settlement Agent posts final settlement figures creates uncertainty with respect to timely completion of settlement at FICC. FICC states that it designed the proposed rule change to address this issue as discussed below.<sup>15</sup>

### B. Proposed Rule Change

FICC proposes to establish an "Acknowledgement Cutoff Time" after which FICC would apply the passive acknowledgement process. The Acknowledgement Cutoff Time would be defined as the later of: (i) 30 minutes after the FICC Settling Banks have been notified that such payment is due, or (ii) 30 minutes prior to the times established by FICC for the execution of Funds-Only (Cash) Settlement debits and credits via NSS.

#### 1. Passive Acknowledgement Process

If a FICC Settling Bank (i) does not submit either (1) an acknowledgement that it would settle the Funds-Only (Cash) Settlement Figure with FICC, or (2) a refusal to pay the Funds-Only (Cash) Settlement Figure, by the Acknowledgement Cutoff Time, and (ii) has not been in contact with the Settlement Agent, then the Settlement Agent would attempt to contact the FICC Settling Bank. This passive acknowledgement process would also apply in situations where the FICC Settling Bank receives a new Funds-Only (Cash) Settlement Figure after such FICC Settling Bank's refusal to pay the prior Funds-Only (Cash) Settlement

Figure for one or more members. Additionally, to facilitate the Settlement Agent's ability to contact FICC Settling Banks, FICC proposes to revise the Rules to state that each FICC Settling Bank must ensure that it maintains accurate contact details with the Settlement Agent so that the Settlement Agent may contact the FICC Settling Bank regarding this settlement process and any settlement issues.

If the FICC Settling Bank cannot be reached, then the FICC Settling Bank would be deemed to have acknowledged that it will settle such Funds-Only (Cash) Settlement Figure with FICC. The FICC Settling Bank's balance will then, in the ordinary course of settlement processing, be debited from or credited to its FRB account through the NSS process along with the other FICC Settling Banks.

However, if the Settlement Agent is able to contact the FICC Settling Bank who notifies the Settlement Agent that it needs more time to determine whether to acknowledge or refuse, then the FICC Settling Bank would not be deemed to have acknowledged its Funds-Only (Cash) Settlement Figure. In this circumstance, the FICC Settling Bank balance would not, as a matter of course, be included in the NSS file unless the FICC Settling Bank subsequently affirmatively acknowledges the balance before the Settlement Agent submits the NSS file.

#### 2. Discretion to Exclude Funds-Only (Cash) Settlement Figures From the NSS File

FICC represents that, although it would maintain flexibility for FICC Settling Banks requesting extra time, it must facilitate timely settlement via NSS for the other Settling Banks.<sup>16</sup> Therefore, FICC proposes to retain its discretion to remove the FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file if: (1) Passive acknowledgement does not apply because the FICC Settling Bank has notified the Settlement Agent that it cannot yet acknowledge or refuse its Funds-Only (Cash) Settlement Figure, and (2) the payment deadline (*i.e.*, the time by which it must execute settlement via the NSS)<sup>17</sup> established by FICC is approaching. According to FICC, its discretion in this circumstance would facilitate timely processing of the NSS file for the other FICC Settling Banks.<sup>18</sup>

#### 3. Technical and Conforming Changes

FICC proposes to make certain technical and conforming changes to the Rules to enhance clarity. First, FICC proposes to revise the Rules to add a new defined term "Acknowledgement Cutoff Time."<sup>19</sup> Second, FICC proposes to replace certain references to the "Corporation," the "Corporation's Operations area," and "DTC" with "Settlement Agent" for accuracy and consistency and to clarify the role of the Settlement Agent under the relevant Rules.<sup>20</sup> In addition, FICC proposes to move certain current subsections and to revise the subsection numbers in the relevant Rules to enhance clarity and accuracy.<sup>21</sup>

### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act<sup>22</sup> 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. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>23</sup> for the reasons described below.

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.<sup>24</sup> As stated in Section II.A above, the failure of a FICC Settling Bank to timely acknowledge that it will settle its Funds-Only (Cash) Settlement Figure with FICC or refuse to pay its Funds-Only (Cash) Settlement Figure creates uncertainty with respect to the timely completion of Funds-Only (Cash) Settlement at FICC. Additionally, circumstances in which a FICC Settling Bank has requested more time to either acknowledge or refuse its Funds-Only (Cash) Settlement Figure could create uncertainty with respect to the timely completion of Funds-Only (Cash) Settlement at FICC via NSS because FICC would not be able to submit the NSS file that includes the balance of the requesting FICC Settling Bank.

<sup>14</sup> For GSD, the NSS execution times are 10:00 a.m. and 3:15 p.m.; for MBSB, these times are 10:00 a.m. and 2:45 p.m. GSD Schedule of Timeframes, *supra* note 4, and MBSB Processing Schedule and Timeframes, available at <http://www.dtcc.com/clearing-services/ficc-mbsd/ficc-mbsd-user-documentation>.

<sup>15</sup> See Notice, *supra* note 3, at 40724.

<sup>16</sup> See Notice, *supra* note 3, at 40725.

<sup>17</sup> *Supra* note 14.

<sup>18</sup> See Notice, *supra* note 3, at 40725.

<sup>19</sup> See *id.*

<sup>20</sup> See *id.* at 40725–40726.

<sup>21</sup> See *id.* at 40725.

<sup>22</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>23</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>24</sup> *Id.*

The introduction of a passive acknowledgement process, in which a FICC Settling Bank has not responded by the Acknowledgement Cutoff Time and cannot be reached by the Settlement Agent would be deemed to have passively acknowledged its Funds-Only (Cash) Settlement Figure, could enhance settlement certainty because it would allow FICC to submit the NSS file for settlement of all FICC Settling Banks' obligations despite an unresponsive FICC Settling Bank. Additionally, the change to expressly allow FICC to exclude a FICC Settling Bank's balance from the NSS file, where the FICC Settling Bank has requested more time, would allow FICC to submit the NSS file without the FICC Settling Bank's balance and thus complete Funds-Only (Cash) Settlement for all other members. Therefore, the Commission believes the changes are designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>25</sup>

Further, the technical and conforming changes should ensure that the Rules remain clear and accurate to FICC members. Having clear and accurate Rules should facilitate FICC members' understanding of those rules and provide members with increased predictability and certainty regarding their obligations. Therefore, the Commission believes the technical and conforming changes would also promote the prompt and accurate clearance and settlement of securities, consistent with Section 17A(b)(3)(F) of the Act.<sup>26</sup>

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, with the requirements of Section 17A of the Act<sup>27</sup> and the rules and regulations promulgated thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>28</sup> that proposed rule change SR-FICC-2020-006, be, and hereby is, approved.<sup>29</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**J. Matthew DeLesDernier**,

*Assistant Secretary*.

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, the Securities and Exchange Commission will hold an Open Meeting on Wednesday, August 26, 2020 at 10:00 a.m.

**PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will begin at 10:00 a.m. (ET) and will be open to the public via audio webcast only on the Commission's website at [www.sec.gov](http://www.sec.gov).

**MATTERS TO BE CONSIDERED:** The subject matter of the open meeting will be the Commission's broader efforts to (1) modernize and improve the Commission's disclosure framework in light of the changes in our capital markets and domestic and global economy, and (2) simplify, harmonize, and improve the exempt offering framework under the Securities Act to promote capital formation and expand investment opportunities while maintaining and enhancing appropriate investor protections. The specific matters to be considered are:

(1) Whether to adopt amendments to modernize the description of business, legal proceedings, and risk factor disclosures that registrants are required to make pursuant to Regulation S-K. These disclosure items, which have not undergone significant revisions in over 30 years, would be updated to account for developments since the rules' adoption or last revision, to improve disclosure for investors, and to simplify compliance for registrants. Specifically, the amendments are intended to improve the readability of disclosure documents, as well as discourage repetition and the disclosure of information that is not material.

(2) whether to adopt amendments to the definition of "accredited investor" in Commission rules and the definition of "qualified institutional buyer" in Rule 144A under the Securities Act to update and improve the definition to

identify more effectively investors that have sufficient financial sophistication to participate in certain private investment opportunities. The amendments are the product of years of efforts by the Commission and its staff to consider and analyze possible approaches to revising the accredited investor definition.

#### CONTACT PERSON FOR MORE INFORMATION:

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman, Office of the Secretary, at (202) 551-5400.

Dated: August 19, 2020.

**Eduardo A. Aleman**,

*Deputy Secretary*.

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 2:00 p.m. on Wednesday, August 26, 2020.

**PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

#### MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> 15 U.S.C. 78q-1.

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>30</sup> 17 CFR 200.30-3(a)(12).