

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82917; File No. SR-FICC-2018-002)

March 20, 2018

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change to Amend the By-Laws

On February 2, 2018, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-FICC-2018-002, 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 rule change was published for comment in the Federal Register on February 14, 2018.<sup>3</sup> The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission approves the proposed rule change.

I. Description of the Proposed Rule Change

The proposed rule change would amend the FICC By-Laws (“By-Laws”)<sup>4</sup> to (1) change certain FICC Board of Directors (“Board”) titles, officer titles, and offices (and their respective powers and duties), (2) update the compensation section for officers, and (3) make technical changes and corrections, each discussed more fully below. The proposed rule change would also amend the GSD Rules and the MBSD Rules to

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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> Securities Exchange Act Release No. 82672 (February 8, 2018), 83 FR 6654 (February 14, 2018) (SR-FICC-2018-002) (“Notice”).

<sup>4</sup> As discussed below, FICC’s By-Laws and FICC’s Certificate of Incorporation (“Certificate of Incorporation”) would each be incorporated by reference into FICC’s Government Securities Division (“GSD”) Rulebook (“GSD Rules”) and Mortgage-Backed Securities Division (“MBSD”) Rulebook (“MBSD Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures>.

incorporate, by reference, the By-Laws and the Certificate of Incorporation. Finally, the proposed rule change would restate the Certificate of Incorporation to streamline the document.

A. Changes to Certain Titles, Offices, and Related Powers and Duties

FICC proposes changes to the titles, offices, and related powers and duties of certain Board and officer personnel, as further described below.

1. Non-Executive Chairman of the Board

FICC proposes to replace the title of “Chairman of the Board” with the title of “Non-Executive Chairman of the Board.”<sup>5</sup> FICC proposes to change its By-Laws to reflect that this position is held by a non-executive.<sup>6</sup> Therefore, FICC would change relevant references in the By-Laws from “Chairman” and “Chairman of the Board” to “Non-Executive Chairman of the Board.”<sup>7</sup> FICC also would delete certain references in the By-Laws to the Non-Executive Chairman of the Board as a member of FICC management because the position is no longer in management.<sup>8</sup>

In the proposed Section 2.8 (Non-Executive Chairman of the Board), FICC would identify the powers and duties of the Non-Executive Chairman of the Board, including (1) general responsibility for carrying out the policies of the Board, (2) general supervision of the Board and its activities and general leadership of the Board, (3) presiding over stockholders’ meetings (when present), and (4) such other powers and

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<sup>5</sup> Notice, 83 FR at 6654.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Notice, 83 FR at 6655.

duties as the Board may designate.<sup>9</sup> Proposed Section 2.8 (Non-Executive Chairman of the Board) also would include a provision stating that a presiding director (as elected by the Board) shall preside at all stockholders and Board meetings when the Non-Executive Chairman of the Board is absent.<sup>10</sup> Additionally, Proposed Section 2.8 (Non-Executive Chairman of the Board) would provide that the Non-Executive Chairman of the Board’s performance of any enumerated duty shall be conclusive evidence of his power to act.<sup>11</sup>

The proposal also identifies the individuals to whom the Non-Executive Chairman may assign duties. In proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer), the Non-Executive Chairman of the Board would have the authority to designate powers and duties to the President and Chief Executive Officer (“CEO”).<sup>12</sup> In proposed Section 3.2 (Powers and Duties of Managing Directors), FICC also would add the Non-Executive Chairman of the Board to the list of individuals who

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<sup>9</sup> Id.

<sup>10</sup> Id. This provision is designed to correct an inaccuracy in current By-Laws Section 3.3 (Powers and Duties of the President), which gives presiding authority over stockholder meetings to the President when the Chairman of the Board is absent. Proposed Section 2.8 (Non-Executive Chairman of the Board) would be consistent with the Mission Statement and Charter of the Depository Trust Corporation (“DTC”), FICC, National Securities Clearing Corporation (“NSCC”), and the Depository Trust and Clearing Corporation (“DTCC”), which gives presiding authority over stockholder meetings to a presiding director when the Non-Executive Chairman of the Board is absent. DTC, FICC, and NSCC are subsidiaries of DTCC, each having the same Board of Directors as DTCC. See Securities Exchange Act Release No. 74142 (January 27, 2015), 80 FR 5188 (January 30, 2015) (SR-FICC-2014-810, SR-NSCC-2014-811, SR-DTC-2014-812).

<sup>11</sup> Notice, 83 FR at 6655.

<sup>12</sup> Id.

have the ability to assign powers and duties to Managing Directors.<sup>13</sup> Finally, in proposed Section 3.4 (Powers and Duties of the Secretary), the Non-Executive Chairman of the Board (i.e., not the President and CEO) would have the authority to assign additional powers and duties to the Secretary.<sup>14</sup>

## 2. Office of the CEO

FICC proposes to revise the By-Laws to reflect that one individual holds the office of the President and CEO. As such, the proposal would change the By-Laws to add the office of the CEO and combine the office of the President and the office of the CEO into one office (President and CEO).<sup>15</sup> While current Section 3.3 (Powers and Duties of the President) provides that the President shall be the CEO, current Section 3.1 (General Provisions) does not include CEO in the list of designated officer positions, though President is currently included in this list.<sup>16</sup> Therefore, FICC proposes to revise the relevant references in the By-Laws from President to President and CEO.<sup>17</sup>

Additionally, FICC proposes to make several By-Laws revisions to reflect the responsibilities for the consolidated role of President and CEO.<sup>18</sup> First, FICC would delete and replace current Section 3.3 (Powers and Duties of the President) with proposed

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<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Notice, 83 FR at 6656.

<sup>18</sup> Id.

Section 3.2 (Powers and Duties of the President and CEO).<sup>19</sup> Proposed Section 3.2 (Powers and Duties of the President and CEO) would clarify the powers and duties associated with the role of President and CEO.<sup>20</sup> For example, in proposed Section 3.2 (Powers and Duties of the President and CEO) the President and CEO would have general supervision over the overall business strategy, business operations, systems, customer outreach, as well as risk management, control, and staff functions, subject to the direction of the Board and the Non-Executive Chairman of the Board.<sup>21</sup> In addition, because the office of the Chief Operating Officer (“COO”) would be eliminated (as described further below), the current COO responsibility of general supervision over FICC’s operations in current Section 3.4 (Powers and Duties of the Chief Operating Officer) would be assigned to the President and CEO.<sup>22</sup> Proposed Section 3.2 (Powers and Duties of the President and CEO) would also delineate the authority that the Non-Executive Chairman of the Board has over the President and CEO by stating that the latter would have such other powers and perform such other duties as the Board or the Non-Executive Chairman of the Board may designate.<sup>23</sup>

FICC also proposes to reassign or reclassify several responsibilities currently assigned to the President.<sup>24</sup> Specifically, the responsibility for executing the Board’s

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<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

policies would be assigned to the Non-Executive Chairman of the Board rather than to the President and CEO.<sup>25</sup> Additionally, FICC would remove the statement “performance of any such duty by the President shall be conclusive evidence of his power to act” in current Section 3.3 (Powers and Duties of the President).<sup>26</sup>

As mentioned above, FICC would delete language from the By-Laws stating that, in the absence of the Chairman of the Board, the President shall preside at all meetings of shareholders and all Board meetings (when present).<sup>27</sup> Similarly, FICC would delete language from the By-Laws stating that the President and Board currently have the authority to assign powers and duties to the Comptroller in current Section 3.8 (Powers and Duties of the Comptroller), as discussed below.<sup>28</sup> In proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) the President and CEO and Board would have the authority to assign duties to the Chief Financial Officer (“CFO”).<sup>29</sup>

The proposal also removes certain responsibilities from the President. In proposed Section 3.4 (Powers and Duties of the Secretary), the power to assign additional powers and duties to the Secretary would be removed from the President and granted to the Non-Executive Chairman of the Board.<sup>30</sup>

### 3. Office of the CFO; Office of the Comptroller

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<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id. As stated above, that power resides with the presiding director who is elected annually by the Board. See supra note 20.

<sup>28</sup> Notice, 83 FR at 6656.

<sup>29</sup> Id.

<sup>30</sup> Id.

The proposal would add the office of the CFO and assign to the CFO general supervision of the financial operations of FICC.<sup>31</sup> References in the By-Laws to the Comptroller would be deleted because FICC states that it neither has a Comptroller nor plans to appoint one.<sup>32</sup> In proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) the CFO would be granted overall supervision authority over the financial operations of FICC, and upon request, the CFO would counsel and advise other officers of FICC and perform other duties as agreed with the President and CEO (or as determined by the Board).<sup>33</sup> The proposal also provides that the CFO would report directly to the President and CEO.<sup>34</sup> Furthermore, because the Treasurer would directly report to the CFO, proposed Section 3.6 (Powers and Duties of the Treasurer) would provide that the Treasurer would have all such powers and duties as generally are incident to the position of Treasurer or as the CFO (in addition to the President and CEO and the Board) may assign.<sup>35</sup>

#### 4. Office of the COO

In this proposal, FICC would delete references in the By-Laws to the COO because FICC states that it no longer has a COO and has no plans to appoint one.<sup>36</sup>

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<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Notice, 83 FR at 6657.

5. Executive Director; Vice President

In this proposal, FICC would change the title of Vice President to Executive Director, and update the Executive Director position's related powers and duties to reflect the position's seniority level.<sup>37</sup> In FICC's organizational structure, Executive Directors report to Managing Directors.<sup>38</sup> Due to this level of seniority, FICC proposes to remove provisions in the By-Laws that previously allowed Vice Presidents (now, Executive Directors) to call special meetings of shareholders, to sign share certificates, or to preside over shareholder meetings unless specifically designated to do so by the Board.<sup>39</sup>

6. Other Changes to the Powers and Duties of the Board and Certain Other Designated Officers

In proposed Section 3.1 (General Provisions), FICC proposes to add a parenthetical phrase to clarify that the Board's power to appoint other officers includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation and one or more Executive Directors.<sup>40</sup> Additionally, in current Section 3.1 (General Provisions), FICC proposes to clarify that neither the Secretary nor any Assistant Secretary can hold the following offices (1) Vice Chairman of the Corporation or (2) President and CEO.<sup>41</sup>

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<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> Id.

The proposal also enumerates the responsibilities of FICC’s Managing Directors.<sup>42</sup> In proposed Section 1.8 (Presiding Officer and Secretary), Managing Directors would be removed from the list of officers authorized to preside over a stockholders’ meeting unless specifically authorized by the Board.<sup>43</sup> Similarly, in proposed Section 2.6 (Meetings), Managing Directors would be added to the list of officers authorized to call special meetings of the Board.<sup>44</sup>

FICC also proposes to amend the By-Laws to remove specific powers from the Treasurer and Assistant Treasurer.<sup>45</sup> In current Section 5.1 (Certificates of Shares), FICC proposes to delete the reference to Treasurer and Assistant Treasurer from the list of authorized signatories because FICC expects the Secretary or Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.<sup>46</sup>

**B. Compensation of the President and CEO**

Proposed Section 3.10 (Compensation of the President and CEO) would reflect FICC’s current compensation-setting practices. Current Section 3.12 (Compensation of Officers) states that (1) the compensation, if any, of the Chairman of the Board, and the President shall be fixed by a majority (which shall not include the Chairman of the Board or the President) of the entire Board of Directors, and (2) salaries of all other officers shall be fixed by the President with the approval of the Board and no officer shall be

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<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id.

precluded from receiving a salary because he is also a director.<sup>47</sup> FICC proposes to state that the Compensation Committee of the Corporation will recommend the compensation for the President and CEO to the Board of Directors for approval.<sup>48</sup> In addition, FICC also proposes to delete the language stating that (1) salaries of all other officers shall be fixed by the President with approval of the Board, and (2) no officer shall be precluded from receiving a salary because he is also a director.<sup>49</sup> FICC proposes to delete compensation-related references to the Chairman of the Board because the Non-Executive Chairman of the Board does not receive compensation.<sup>50</sup> Finally, FICC proposes to change the title of proposed Section 3.10 from “Compensation of Officers” to “Compensation of the President and Chief Executive Officer” because this section would no longer address the compensation of officers other than the President and CEO.<sup>51</sup>

C. Technical Changes and Corrections

FICC proposes technical changes and/or corrections to the By-Laws for clarity and readability, as described below.<sup>52</sup>

1. Statutory References and Requirements

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<sup>47</sup> Id.

<sup>48</sup> Notice, 83 FR at 6657-58. FICC states that it proposes this change for consistency with the DTCC/DTC/FICC/NSCC Compensation and Human Resources Committee Charter. Id. at 6658.

<sup>49</sup> Notice, 83 FR at 6658.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

FICC would delete direct statutory references from the By-Laws.<sup>53</sup> FICC states that it would make this change to have the By-Laws remain consistent and accurate despite any changes to a specifically cited statute.<sup>54</sup>

2. Other Technical Changes and Corrections

FICC proposes to make additional technical and grammatical changes to address (1) typographical errors, (2) section numbering, (3) grammatical errors, (4) heading consistency, and (5) gender references.<sup>55</sup>

D. Proposed Changes to the Rules

FICC proposes to add a section entitled “By-Laws and Restated Certificate of Incorporation” to both the GSD Rules and the MBSD Rules.<sup>56</sup> FICC proposes that this section would state that the By-Laws and Restated Certificate of Incorporation are incorporated by reference.<sup>57</sup>

E. Proposed Changes to the Certificate of Incorporation

FICC proposes to restate the Certificate of Incorporation into one document.<sup>58</sup> Specifically, FICC proposes to update the Certificate of Incorporation by including all of its amendments into one updated Certificate of Incorporation.<sup>59</sup>

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<sup>53</sup> Id.

<sup>54</sup> Id.

<sup>55</sup> Id.

<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> Id.

## II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act 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 rules and regulations thereunder applicable to such organization.<sup>60</sup> The Commission believes the proposal is consistent with Act, specifically Section 17A(b)(3)(F) of the Act and Rules 17Ad-22(e)(1) and, in part, (2) under the Act.<sup>61</sup>

### A. Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency, such as FICC, be designed to protect the public interest.<sup>62</sup> As discussed above, the proposed rule change would make a number of updates to the By-Laws.

First, FICC proposes to revise FICC's description of the titles and responsibilities of its Board and senior management to match FICC's current corporate structure. These changes would help the Board, as well as FICC's management, employees, and members, understand which officer or office is responsible for each of FICC's executive-level functions.

Second, the proposal would update the compensation-setting section of the By-Laws to reflect the Compensation Committee Charter practice, as well as to reflect that the Non-Executive Chairman of the Board would not receive compensation. The proposal's increased clarity around compensation-setting would better inform FICC

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<sup>60</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>61</sup> 15 U.S.C. 78q-1(b)(3)(F); 17 CFR 240.17Ad-22(e)(1) and (2).

<sup>62</sup> 15 U.S.C. 78q-1(b)(3)(F).

stakeholders and the general public about how FICC sets the level of compensation for its highest-level executive (the President and CEO) and that the Non-Executive Chairman does not draw a salary.

Third, FICC's proposed technical changes and corrections to its By-Laws would enhance the clarity, transparency, and readability of FICC's organizational documents. In this way, the proposal would better enable the Board, as well as FICC's management, employees, and members, to understand their respective authorities, rights, and obligations regarding FICC's clearance and settlement of securities transactions.

Fourth, FICC's proposed addendum would incorporate the By-Laws and Certificate of Incorporation into the Rules. This change would increase the clarity and transparency of FICC's organizational documents by integrating the By-Laws and the Certificate of Incorporation into the Rules, to which all FICC members are subject and have access.

Finally, FICC's proposed restatement of the Certificate of Incorporation would revise the Certificate of Incorporation to include all of its amendments in one updated document. This change would increase the clarity and transparency of FICC's constitutional document by consolidating all of its amendment into a single document, increasing its accessibility and readability for FICC's members.

Governance arrangements are critical to the sound operation of clearing agencies.<sup>63</sup> Specifically, clear and transparent governance documents promote accountability and reliability in the decisions, rules, and procedures of a clearing

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<sup>63</sup> Securities Exchange Act Release No. 71699 (May 21, 2014), 79 FR 29508 (May 22, 2014) ("Covered Clearing Agency Standards Proposing Release") at 29521.

agency.<sup>64</sup> Clear and transparent governance documents also provide interested parties, including owners, members, and general members of the public, with information about how a clearing agency's decisions are made and what the rules and procedures are designed to accomplish.<sup>65</sup> Further, the decisions, rules, and procedures of a clearing agency are important, as they can have widespread impact, affecting multiple market members, financial institutions, markets, and jurisdictions.<sup>66</sup>

As stated above, the proposed rule change would provide FICC stakeholders with a better understanding of how FICC makes decisions that could ultimately affect the financial system. Such transparency helps ensure that FICC reliably makes decisions and follows clearly articulated policies and procedures. Accordingly, the Commission finds that the proposed rule change is designed to enhance the clarity and transparency of FICC's organizational documents, which would help protect the public interest, consistent with Section 17A(b)(3)(F) of the Act.<sup>67</sup>

B. Rule 17Ad-22(e)(1) under the Act

Rule 17Ad-22(e)(1) under the Act requires a covered clearing agency<sup>68</sup> to establish, implement, maintain, and enforce written policies and procedures reasonably

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<sup>64</sup> Securities Exchange Act Release No. 64017 (March 3, 2011), 76 FR 14472 (March 16, 2011) at 14488.

<sup>65</sup> Id.

<sup>66</sup> Covered Clearing Agency Standards Proposing Release, 79 FR at 29521.

<sup>67</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>68</sup> A "covered clearing agency" means, among other things, a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q-1 et seq.) that is designated systemically important by the Financial Stability Oversight Counsel ("FSOC") pursuant to the Payment, Clearing, and

designed to provide for a well-founded, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.<sup>69</sup>

As discussed above, the proposed rule change would update the By-Laws by (1) updating FICC's description of the titles and responsibilities of its Board and senior management to match FICC's current corporate structure, (2) documenting FICC's current compensation-setting process, and (3) enacting technical corrections to increase readability. The proposed rule change would also add an addendum to the Rules to incorporate the By-Laws and the Certificate of Incorporation by reference, as well as to restate the Certificate of Incorporation to include all of its amendments in one updated document.

The proposed changes are designed to help ensure that the By-Laws better reflect FICC's governance practices, as well as to organize FICC's constitutional documents, in a clear, transparent, and consistent manner. This increased transparency would help convey to FICC's stakeholders, and the public generally, a key legal basis for the activities of the highest levels of FICC's leadership described in the By-Laws. Therefore, the Commission finds that the proposed rule change is designed to help ensure that FICC's organizational documents remain well-founded, transparent, and legally

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Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*). See 17 CFR 240.17Ad-22(a)(5)-(6). On July 18, 2012, FSOC designated FICC as systemically important. U.S. Department of the Treasury, "FSOC Makes First Designations in Effort to Protect Against Future Financial Crises," available at <https://www.treasury.gov/press-center/press-releases/Pages/tg1645.asp>. Therefore, FICC is a covered clearing agency.

<sup>69</sup> 17 CFR 240.17Ad-22(e)(1).

enforceable in all relevant jurisdictions, consistent with Rule 17Ad-22(e)(1) under the Act.<sup>70</sup>

C. Rule 17Ad-22(e)(2)(i) and (v) under the Act

Rule 17Ad-22(e)(2)(i) and (v) under the Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, (1) are clear and transparent and (2) specify clear and direct lines of responsibility.<sup>71</sup>

As described above, FICC proposes a number of changes to its By-Laws that would provide clarity and transparency. FICC proposes to revise By-Laws provisions that were outdated or incorrect. Specifically, the proposed changes to the titles and offices (and their related powers and duties) would provide clarity and transparency because they would clearly set forth FICC's current organizational structure, including the lines of responsibility of various officers and the Board. The proposed changes relating to compensation-setting would also give clarity and transparency by (1) accurately reflecting the process that is followed pursuant to the Compensation Committee Charter, and (2) clarifying that the Non-Executive Chairman of the Board does not receive compensation. Meanwhile, the proposed technical changes and corrections would raise the clarity and transparency of the By-Laws by removing grammatical and typographical errors. Additionally, FICC proposes changes to provide clarity and transparency by including an addendum to its Rules (to incorporate the By-Laws and Certificate of Incorporation by reference), and by restating its Certificate of

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<sup>70</sup> Id.

<sup>71</sup> 17 CFR 240.17Ad-22(e)(2)(i) and (v).

Incorporation (to include all of its amendment in one updated document). Both proposed changes would create clarity and transparency by integrating FICC's organizational documents in a manner that is more accessible to FICC's members.

For these reasons, the Commission finds that the proposed rule change is designed to enhance clarity and transparency in FICC's governance arrangements, as well as to specify clear and direct lines of responsibility for various officer positions and the Board within FICC's organizational structure, consistent with Rule 17Ad-22(e)(2)(i) and (v) under the Act.<sup>72</sup>

### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act<sup>73</sup> and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR-FICC-2018-002 be, and hereby is, APPROVED.<sup>74</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>75</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>72</sup> Id.

<sup>73</sup> 15 U.S.C. 78q-1.

<sup>74</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>75</sup> 17 CFR 200.30-3(a)(12).