

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of \*       SECURITIES AND EXCHANGE COMMISSION      File No.\* SR -  - \*   
 WASHINGTON, D.C. 20549      Form 19b-4      Amendment No. (req. for Amendments \*)

Filing by Fixed Income Clearing Corporation  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<b>Initial *</b>	<b>Amendment *</b>	<b>Withdrawal</b>	<b>Section 19(b)(2) *</b>	<b>Section 19(b)(3)(A) *</b>	<b>Section 19(b)(3)(B) *</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
<b>Pilot</b>	<b>Extension of Time Period for Commission Action *</b>	<b>Date Expires *</b>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

<b>Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010</b>	<b>Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934</b>
<b>Section 806(e)(1) *</b>	<b>Section 806(e)(2) *</b>
<input type="checkbox"/>	<input type="checkbox"/>
	<b>Section 3C(b)(2) *</b>
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document       Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Amend the By-Laws and Make Other Changes

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \*       Last Name \*   
 Title \*   
 E-mail \*   
 Telephone \*       Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date         
 By      

(Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

## **1. Text of the Proposed Rule Change**

(a) The proposed rule change is attached as Exhibit 5 and would amend the Fixed Income Clearing Corporation (“FICC”) By-Laws (“By-Laws”) to (i) revise titles or offices and the powers and duties of the Board of Directors (“Board”) and certain designated officers of FICC, (ii) revise the section describing compensation of officers, and (iii) make certain technical changes and corrections.<sup>1</sup> The GSD Rules and the MBSD Rules would also be amended to incorporate by reference the By-Laws and the Restated Certificate of Incorporation.<sup>2</sup>

(b) Not applicable.

(c) Not applicable.

## **2. Procedures of the Self-Regulatory Organization**

The proposed changes were approved by the Board at a meeting duly called and held on December 20, 2017.

## **3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

### **(a) Purpose**

In FICC’s review of the By-Laws, FICC has identified and is proposing the following changes to the By-Laws: (i) revising certain Board and designated officer titles or offices and updating the related powers and duties, (ii) revising the section describing the compensation of officers and (iii) making certain technical changes and corrections. Specifically, regarding the proposed changes to the Board and designated officer titles or offices and updating the related powers and duties, FICC is proposing to: (1) change the title of Chairman of the Board to Non-Executive Chairman of the Board and update the related powers and duties associated with that role due to personnel changes in FICC’s management, (2) add the office of the Chief Executive Officer (“CEO”), combine the office of the President and the office of the Chief Executive Officer into one office (President and Chief Executive Officer) and update the related powers and duties to reflect that the two positions are now combined and are held by one individual, (3) add the office of the Chief Financial Officer (“CFO”) and delete the office of the

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<sup>1</sup> FICC’s restated Certificate of Incorporation in its entirety (the “Restated Certificate of Incorporation”) is included in Exhibit 5C. Proposed changes to the By-Laws are included in Exhibit 5B. The By-Laws and the Restated Certificate of Incorporation would each be incorporated by reference into the FICC Government Securities Division Rulebook (“GSD Rules”) and the FICC Mortgage-Backed Securities Division Rulebook (“MBSD Rules”). Proposed changes to the MBSD Rules and GSD Rules are included in Exhibit 5A.

<sup>2</sup> The GSD Rules and the MBSD Rules are available at <http://www.dtcc.com/legal/rules-and-procedures>. The By-Laws and the Restated Certificate of Incorporation would be available at <http://www.dtcc.com/legal/rules-and-procedures>.

Comptroller, (4) delete the office of the Chief Operating Officer (“COO”), (5) change the title of Vice President to Executive Director and update the related powers and duties, and (6) make other changes related to certain powers and duties of the Board and various officers, including Managing Directors, the Vice Chairman of the Corporation, the Treasurer and the Assistant Treasurer, as described in greater detail below. FICC is proposing to make these changes to the By-Laws so that the By-Laws remain consistent and accurate and FICC’s governance documents accurately reflect its management and organizational structure and the responsibilities within the purview of certain roles. FICC believes these changes would facilitate the efficient governance and operation of FICC.

The GSD Rules and MBSD Rules would also be amended to incorporate by reference the Restated Certificate of Incorporation and the By-Laws, as further described below. The current Certificate of Incorporation would be restated to streamline this document, which FICC believes would enhance clarity and transparency. The following describes the proposed changes to the By-Laws, the Certificate of Incorporation, the GSD Rules, and the MBSD Rules.

**Proposed Changes to the By-Laws**<sup>3</sup>

***A. Changes to Certain FICC Board and Designated Officer Titles or Offices and Updates to the Related Powers and Duties***

FICC proposes to revise the titles or offices and update the related powers and duties of various designated officers and the Board, as further described below.

1. **Change the Title of Chairman of the Board to Non-Executive Chairman of the Board; Update the Powers and Duties of the Non-Executive Chairman of the Board**

FICC proposes to replace the title of Chairman of the Board with the title Non-Executive Chairman of the Board (“Non-Executive Chairman of the Board”). This change in title reflects that this position is now held by an individual who is not part of FICC’s management (i.e., a non-executive). In 2016, FICC made personnel changes. As part of these personnel changes, the individual who was serving as Chairman of the Board and who was part of FICC’s management at that time became a non-executive. FICC believed that it would be beneficial and desirable to continue to have this individual serve as chairman of the Board even though he is no longer part of FICC’s management. Therefore, FICC proposes to change the title of this position in the By-Laws to Non-Executive Chairman of the Board to reflect that this position is held by a non-executive. FICC believes this proposed change would accurately reflect this organizational change. Furthermore, FICC proposes to revise the By-Laws to enumerate the powers and duties of the Non-Executive Chairman of the Board. To implement this proposed change, FICC would revise the By-Laws as described below.

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<sup>3</sup> FICC last submitted a rule filing regarding changes to the By-Laws in 2006. See Securities Exchange Act Release No. 54173 (July 19, 2006), 71 FR 42890 (July 28, 2006) (SR-DTC-2006-10, SR-FICC-2006-09, and SR-NSCC-2006-08).

Certain references to either Chairman or Chairman of the Board would be revised to Non-Executive Chairman of the Board in the sections of the By-Laws that would continue to apply to the Non-Executive Chairman of the Board. Specifically, the following changes would be made:

- a. In current Section 1.2 (Special Meetings), the references to Chairman would be revised to Non-Executive Chairman of the Board by adding the word “Non-Executive” before the second reference to Chairman in the first sentence and the phrase “of the Board” after such reference. In addition, the phrase “by the Chairman” in the first sentence of current Section 1.2 (Special Meetings) would be deleted because it would be repetitive to the language that is currently included later in this section.
- b. In current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), and current Section 5.1 (Certificates for Shares), the word “Non-Executive” would be added before each reference to the Chairman of the Board.

Certain references to Chairman of the Board in the By-Laws would be deleted because such references are in the sections of the By-Laws that only apply to members of FICC management. Because the Non-Executive Chairman of the Board would not be a management position, such sections of the By-Laws would no longer be applicable. Specifically, the following changes would be made:

- a. In current Section 3.1 (General Provisions), Chairman of the Board would be removed from the list of designated officers of FICC.
- b. In current Section 3.12 (Compensation of Officers), the references to the Chairman of the Board would also be deleted because the Non-Executive Chairman of the Board does not receive compensation and because, as further described below, this section would be revised to only address the setting of compensation for the President.

Current Section 3.2 (Powers and Duties of the Chairman of the Board) would be deleted and replaced by proposed Section 2.8 (Non-Executive Chairman of the Board). Specifically, the following changes would be made:

- a. Certain powers and duties prescribed to the Chairman of the Board in current Section 3.2 (Powers and Duties of the Chairman of the Board) would remain with the Non-Executive Chairman of the Board. Such powers and duties include (i) presiding over the meetings of the stockholders and of the Board at which he is present and (ii) such other powers and duties as the Board may designate. This would be set forth in proposed Section 2.8 (Non-Executive Chairman of the Board). Furthermore, as is similarly stated in current Section 3.2 (Powers and Duties of the Chairman of the Board), proposed Section 2.8 (Non-Executive Chairman of the Board) would also state that the “performance

of any such duty by the Non-Executive Chairman of the Board shall be conclusive evidence of his power to act.”

- b. FICC would also expressly include in proposed Section 2.8 (Non-Executive Chairman of the Board) that the Non-Executive Chairman of the Board has general supervision over the Board and its activities and would provide overall leadership to the Board. Consistent with his authority to supervise and lead the Board, FICC proposes to assign the responsibility for carrying out the policies of the Board of Directors to the Non-Executive Chairman of the Board rather than the President (as is provided in current Section 3.3 (Powers and Duties of the President)). Furthermore, in current Section 3.6 (Powers and Duties of the Secretary), the power to assign additional powers and duties to the Secretary would be revised to replace the reference to President with Non-Executive Chairman of the Board. FICC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have as part of his general supervision of the Board.
- c. In addition, proposed Section 2.8 (Non-Executive Chairman of the Board) would state that, in the absence of the Non-Executive Chairman of the Board, the presiding director, as elected by the Board, shall preside at all meetings of the stockholders and of the Board at which he or she is present. Current Section 3.3 (Powers and Duties of the President) provides that, in the absence or in ability of the Chairman of the Board, the President shall preside at all meetings of shareholders and all meetings of the Board of Directors at which he is present. Pursuant to the Board of Directors of The Depository Trust & Clearing Corporation (“DTCC”), The Depository Trust Company (“DTC”), FICC and National Securities Clearing Corporation (“NSCC”) Mission Statement and Charter (“Board Mission Statement and Charter”), FICC annually elects a presiding director to preside at meetings when the Non-Executive Chairman of the Board is absent. As such, FICC believes the proposed language described above would enhance accuracy by correcting the inconsistency between the By-Laws and the Board Mission Statement and Charter.
- d. As further described below, 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 CEO. FICC believes this authority to designate powers and duties to the President and CEO is within the scope of the supervisory role of the Non-Executive Chairman of the Board and therefore proposes to revise the By-Laws to expressly state that the Non-Executive Chairman has this authority.
- e. In current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), FICC would add the Non-Executive Chairman of the Board to the list of individuals who have the power to assign powers

and duties to Managing Directors as well as make conforming changes. FICC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have because he has general supervision over the Board.

2. Add the Office of the CEO and Combine the Office of the President and the Office of the CEO into the Office of the President and CEO; Update the Related Powers and Duties

FICC proposes 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) because one individual is the President and CEO. FICC proposes to revise the By-Laws to reflect that one individual holds the office of the President and CEO, including revising the list of designated officers in current Section 3.1 (General Provisions) to include the President and CEO. While current Section 3.3 (Powers and Duties of the President) provides that the President shall be the chief executive officer, current Section 3.1 (General Provisions) does not include CEO in the list of designated officer positions (President is currently included in this list). As such, FICC would revise certain references in the By-Laws from President to President and Chief Executive Officer. Specifically, FICC proposes to make the changes to the By-Laws that are described below.

- a. In current Section 1.2 (Special Meetings), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), current Section 3.1 (General Provisions), current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), current Section 3.7 (Powers and Duties of the Treasurer), and current Section 3.12 (Compensation of Officers), the words “and Chief Executive Officer” would be added after each reference to President.
- b. In current Section 5.1 (Certificates for Shares), the words “the President” would be deleted and replaced by the words “President and Chief Executive Officer.”
- c. Additionally, in current Section 1.2 (Special Meetings), the phrase “, or by the President,” in the first sentence would be deleted because FICC believes it is repetitive to language that appears later in the section.

Furthermore, except as otherwise described below, the responsibilities, duties and powers granted to the President that are currently described in the By-Laws would continue to remain with the President and CEO. FICC proposes to make the following changes to the By-Laws to reflect the updated responsibilities and powers and duties that are granted to the President and CEO:

- a. A portion of current Section 3.3 (Powers and Duties of the President) would be deleted and replaced with proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer). The remaining portion of current Section 3.3 (Powers and Duties of the President) would

be included in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer).

- b. Current Section 3.3 (Powers and Duties of the President) states that the President will have general supervision over the business and affairs of FICC subject to the direction of the Board. Additionally, current Section 3.3 (Powers and Duties of the President) states that the President may employ and discharge employees and agents of FICC, except such as shall be elected or appointed by the Board, and he may delegate these powers. Similarly, proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer) would state that the President and Chief Executive Officer would have general supervision over the overall business strategy, business operations, systems, customer outreach, and risk management, control and staff functions, subject to the direction of the Board and the Non-Executive Chairman of the Board. FICC believes the additional detail provided in proposed Section 3.2 (Powers and Duties of the President and CEO) would add clarity to the powers and duties associated with the role of President and Chief Executive Officer and would be consistent with the combined role. In addition, because the office of the COO would be eliminated (as described further below), the responsibility of general supervision over the operations of FICC, which is designated to the COO role in current Section 3.4 (Powers and Duties of the Chief Operating Officer), would be assigned to the President and CEO.
- c. Proposed Section 3.2 (Powers and Duties of the President and CEO) would state that the President and CEO would have such other powers and perform such other duties as the Board or the Non-Executive Chairman of the Board may designate. FICC believes this generally aligns with current Section 3.3 (Powers and Duties of the President). FICC believes that providing the Non-Executive Chairman of the Board with this additional authority to designate powers and duties to the President and CEO is within the scope of the supervisory role of the Non-Executive Chairman of the Board.
- d. As noted above, certain powers and duties listed in current Section 3.3 (Powers and Duties of the President) would be removed or assigned to another position. Specifically, as noted above, the responsibility for carrying out the policies of the Board would be assigned to the Non-Executive Chairman of the Board rather than to the President and CEO. Additionally, the statement that “performance of any such duty by the President shall be conclusive evidence of his power to act” that appears in current Section 3.3 (Powers and Duties of the President) would be removed as FICC believes it would be best practice to document specific designation of powers and/or duties made by the Board or Non-Executive Chairman of the Board to the President and CEO.



- e. As described above, in current Section 3.6 (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. FICC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have as part of his general supervision of the Board.
- f. As described below, 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). Similarly, proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) would provide that the CFO would perform such other duties as he may agree with the President and CEO and the Board.

3. Add the Office of the CFO; Delete of the Office of the Comptroller

FICC would add the office of the CFO and assign to the CFO all of the powers and duties of the office of the chief financial officer. The CFO would, in general, have overall supervision of the financial operations of FICC. Furthermore, references to the office of the Comptroller would be deleted. FICC does not currently have a Comptroller nor does FICC plan to appoint one. Therefore, FICC believes it would be more accurate to remove all references to such position in the By-Laws. Specifically, FICC would revise the By-Laws as described below.

- a. In current Section 3.1 (General Provisions), CFO would be added to and Comptroller would be removed from the list of designated officers of FICC.
- b. FICC would add proposed Section 3.5 (Powers and Duties of the Chief Financial Officer). This proposed section would enumerate the powers and duties of the CFO. It would state that the CFO would have overall supervision of the financial operations of FICC and upon request, 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. FICC believes these powers and duties are appropriate for the newly created role of CFO. Proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) would also state that the CFO would report directly to the President and CEO. FICC believes it is appropriate for the CFO to report to the President and CEO and to specify this clear line of responsibility in the By-Laws.
- c. Furthermore, proposed Section 3.6 (Powers and Duties of the Treasurer) would also be revised to state that the Treasurer shall 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 to him. Because the Treasurer directly reports to the CFO, FICC believes it is appropriate for the CFO to assign powers and duties to the Treasurer.

- d. FICC would delete current Section 3.8 (Powers and Duties of the Comptroller), which, with the elimination of the office of the Comptroller, would no longer be necessary.

4. Delete the Office of the COO

FICC would also delete references to the designated office of the COO in the By-Laws. FICC believes this change is necessary because FICC no longer has a COO nor does FICC plan to appoint one. Specifically, FICC would make the changes to the By-Laws described below.

- a. In current Section 3.1 (General Provisions), the COO would be removed from the list of designated officers of FICC.
- b. Current Section 3.4 (Powers and Duties of the Chief Operating Officer) would be deleted, which, with the elimination of the office of the COO, would no longer be necessary. The power and duty prescribed to this position (general supervision over the operations of FICC) would be assigned to the President and CEO in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer), as described above.

5. Change the Title of Vice President to Executive Director; Update the Related Powers and Duties

FICC proposes to change the title of Vice President to Executive Director and update the related powers and duties. FICC believes these changes are necessary because FICC has decided that the title of Executive Director is more widely used in the financial services industry for roles similar to those designated as Vice Presidents. In FICC's organizational structure, Executive Directors report to Managing Directors. As such, it was decided that Executive Directors do not have sufficient seniority to call special meetings of shareholders, to preside over shareholder meetings unless specifically designated to do so by the Board, or to sign share certificates. FICC proposes to make the following changes to the By-Laws to reflect the change in the title from Vice President to Executive Director and to update the related powers and duties.

- a. In current Section 1.2 (Special Meetings), the proposed rule change would remove Vice Presidents from the list of officers authorized to call special meetings of shareholders. FICC believes that Vice Presidents do not have sufficient seniority to call special meetings of shareholders.
- b. In current Section 1.8 (Presiding Officer and Secretary), Vice President would be removed. FICC believes that a Vice President should not preside over a shareholder meeting unless specifically designated to do so by the Board.
- c. In current Section 3.1 (General Provisions), Vice Presidents would be removed from the list of designated officers of FICC. As described below, a parenthetical phrase would be added explaining that the Board's power

to appoint other officers includes the power to appoint one or more Executive Directors.

- d. In current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), all references to Vice President would be deleted. Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors) currently states that Vice Presidents and Managing Directors have such powers and perform such duties as the Board or the President may assign to them.<sup>4</sup> Because individuals with the title of Executive Director report to Managing Directors, FICC believes the reference to Vice President in this section would not be necessary.
- e. In current Section 5.1 (Certificates for Shares), the reference to Vice President would be removed because Vice Presidents are no longer authorized to sign share certificates. As described above, FICC decided that they do not have sufficient seniority to do so.

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

*Managing Directors*

- a. In Section 1.8 (Presiding Officer and Secretary), the reference to the Managing Director would be removed because FICC believes a Managing Director should not preside over a shareholder meeting unless specifically designated to do so by the Board.
- b. In current Section 2.6 (Meetings), the proposal would add Managing Directors to the list of officers authorized to call special meetings of the Board. FICC believes this proposed change would provide FICC's management with additional flexibility by enabling additional persons within senior management to call special meetings of the Board.

*Vice Chairman of the Corporation*

As described below, a parenthetical phrase would be added in current Section 3.1 (General Provisions) explaining that the Board's power to appoint other offices includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation.

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<sup>4</sup> With this proposal, this reference to President would be revised to President and CEO, and the Non-Executive Chairman of the Board would be added so the Non-Executive Chairman of the Board would also be able to assign powers and duties to the Managing Directors.

*Board*

- a. In current Section 3.1 (General Provisions), FICC proposes to add a parenthetical phrase explaining that the Board's power to appoint other offices includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation and one or more Executive Directors to enhance clarity.
- b. Additionally, in current Section 3.1 (General Provisions), regarding the ability of any one person to hold more than one office, FICC proposes to enhance and clarify the exception by specifying that neither the Secretary nor any Assistant Secretary can hold the following offices: (1) Vice Chairman of the Corporation, (2) President, or (3) President and CEO. FICC believes this proposed change is necessary to ensure that the Secretary and any Assistant Secretary would not hold those positions.

*Treasurer*

In current Section 5.1 (Certificates for Shares), FICC proposes to delete the reference to Treasurer from the list of authorized signatories because FICC expects the Secretary or an Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.

*Assistant Treasurer*

In current Section 5.1 (Certificates for Shares), FICC proposes to delete the reference to Assistant Treasurer from the list of authorized signatories because FICC expects the Secretary or an Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.

7. Revise Compensation of Officers to Compensation of the President and Chief Executive Officer

Current Section 3.12 (Compensation of Officers) would be revised to accurately reflect FICC's compensation setting practices. Current Section 3.12 states that: (i) 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 (ii) salaries of all other officers shall be fixed by the President with the approval of the Board and no officer shall be precluded from receiving a salary because he is also a director. Current Section 3.12 would be revised to state that the Compensation Committee of the Corporation will recommend the compensation for the President and Chief Executive Officer to the Board of Directors for approval because, pursuant to the DTCC/DTC/FICC/NSCC Compensation and Human Resources Committee Charter ("Compensation Committee Charter"), this is the process that is followed. In addition, FICC also proposes to delete the language stating that salaries of all other officers shall be fixed by the President with approval of the Board and no officer shall be precluded from receiving a salary because he is also a director. FICC believes

the proposed changes are appropriate because they no longer reflect FICC's compensation setting procedures. In addition, as noted above, references to Chairman of the Board would be deleted because the Non-Executive Chairman of the Board does not receive compensation. Furthermore, the title of this section would be revised from Compensation of Officers to Compensation of the President and Chief Executive Officer because this section would no longer speak to the compensation of officers other than the President and CEO.

***B. Technical Changes and Corrections***

FICC has identified the following technical changes and/or corrections that it proposes to make to the By-Laws to enhance the clarity and readability of the By-Laws.

1. Delete Direct Reference to Statutes and Statutory Requirements

FICC would delete direct statutory references from the By-Laws as set forth below so that the By-Laws remain consistent and accurate despite any changes to a specifically cited statute. FICC believes this proposed change would also provide FICC with a broad base to act in accordance with relevant law without violating the By-Laws and thereby also provide FICC with more flexibility. Specifically, FICC proposes to make the following changes to the By-Laws:

- a. In current Section 1.2 (Special Meetings), regarding special meetings for the election of directors, the reference to the provisions of Section 603 of the New York Business Corporation Law would be deleted and the phrase "or as required by law" would be added.
- b. In current Section 1.4 (Notice of Meetings), regarding the composition of notices for shareholder meetings, the reference to the specific provisions and requirements of Section 623 of the New York Business Corporation Law would be deleted.

2. Other Technical Changes and Corrections

In addition to the technical changes proposed above, FICC proposes to make the additional technical and grammatical changes described below.

- a. In the heading for the By-Laws, "AMENDED AND RESTATED" would be deleted and "BY-LAWS OF FIXED INCOME CLEARING CORPORATION" would be revised to boldfaced text.
- b. In the headings for Articles I through VIII, (i) each of "ARTICLE I," "ARTICLE II," "ARTICLE III," "ARTICLE IV," "ARTICLE V," "ARTICLE VI," "ARTICLE VII," and "ARTICLE VIII" would be revised to boldfaced text and (ii) each of the article titles would be revised to boldfaced text to enhance readability.

- c. In current Sections 1.1 through 2.11 and current Sections 4.1 through 5.4, the section number and section titles would be revised to italicized text to be consistent with current Sections 3.1 through 3.12.
- d. In current Section 1.2 (Special Meetings), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), current Section 3.1 (General Provisions), current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), current Section 3.6 (Powers and Duties of the Treasurer), current Section 3.12 (Compensation of Officers), and current Section 5.1 (Certificates for Shares), conforming grammatical corrections would be made.
- e. Current Section 2.8 (Executive Committee) through current Section 2.11 (Compensation of and Loans to Directors) would be renumbered to reflect the addition of proposed Section 2.8 (Non-Executive Chairman of the Board).
- f. In current Section 2.11 (Compensation of and Loans to Directors), “form” would be deleted and replaced with “from” to correct a typographical error.
- g. Current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors) through current Section 3.12 (Compensation of Officers) would be renumbered to reflect the addition of proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer) and proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) and the deletion of current Section 3.2 (Powers and Duties of the Chairman of the Board), current Section 3.3 (Powers and Duties of the President), current Section 3.4 (Powers and Duties of the Chief Operating Officer) and current Section 3.8 (Powers and Duties of the Comptroller).
- h. In current Section 4.1 (Directors and Officers), “corporation” would be deleted and replaced with “Corporation” to correct a typographical error.
- i. Proposed Article IX (Gender References) would be added to clarify that the By-Laws are intended to be gender neutral with any reference to one gender deemed to include the other.

**Proposed Changes to the Certificate of Incorporation**

The current Certificate of Incorporation is comprised of several documents, including amendments that have been made throughout the history of FICC. In order to streamline this Certificate of Incorporation into one updated document that includes all provisions, FICC would restate the current Certificate of Incorporation as proposed in Exhibit 5C.

**Proposed Changes to the GSD Rules and MBSD Rules**

FICC proposes to add a section entitled “By-Laws and Restated Certificate of Incorporation” to each of the GSD Rules and MBSD Rules. This section would indicate that the Restated Certificate of Incorporation and the By-Laws are incorporated by reference.

(b) Statutory Basis

Section 17A(b)(3)(A) of the Securities Exchange Act of 1934, as amended (the “Act”), requires, among other things, that a clearing agency is so organized to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.<sup>5</sup> FICC believes the (a) proposed changes to the By-Laws described above, (b) restatement of the Certificate of Incorporation, and (c) incorporation by reference of the By-Laws and the Restated Certificate of Incorporation in the GSD Rules and MBSD Rules are consistent with this provision. Specifically, FICC believes that the (1) change of title from Chairman of the Board to Non-Executive Chairman of the Board and changes to the related powers and duties, (2) addition of the office of the CEO, the combination of the offices of the President and CEO and changes to the related powers and duties, (3) addition of the office of the CFO and deletion of the office of the Comptroller, (4) change of title from Vice President to Executive Director and changes to the related powers and duties, (5) deletion of the office of the COO, (6) changes to the powers and duties of the Board, (7) changes to the powers and duties of Managing Directors, (8) changes to the powers and duties of Vice Chairman of the Corporation, (9) changes to the powers and duties of the Treasurer, and (10) changes to the powers and duties of the Assistant Treasurer are designed to facilitate the effective and efficient governance and operation of FICC and accurately reflect FICC’s current Board and management structure. FICC also believes the changes to the powers and duties of the Board and designated officer positions are appropriate and aligned with each role. Furthermore, these proposed changes are intended to promote additional clarity as to the responsibilities of the Board and certain designated officers. FICC believes the proposed changes to the section describing the compensation of officers are designed to accurately reflect: (1) the process that is followed for setting compensation pursuant to the Compensation Committee Charter and (2) that the Non-Executive Chairman of the Board does not receive compensation and would promote additional clarity as to the setting of compensation of the President and CEO and Non-Executive Chairman of the Board. FICC also believes (1) the technical changes and corrections to the By-Laws and (2) the restatement of the Certificate of Incorporation into a simpler document would enhance clarity and transparency in FICC’s organizational documents. Similarly, FICC believes incorporating the By-Laws and the Restated Certificate of Incorporation into the GSD Rules and the MBSD Rules would enhance clarity and transparency regarding FICC’s organizational documents because these organizational documents would be expressly identified in the same document as the MBSD Rules and GSD Rules to which members are subject. Therefore, FICC believes these proposed changes are consistent with the requirement that FICC is so organized to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.

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<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(A).

Rule 17Ad-22(e)(1) under the Act requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.<sup>6</sup> FICC believes the (1) proposed changes to the titles or offices and the related powers and duties of the Board and certain officers and (2) proposed technical changes and corrections to the By-Laws are designed to ensure that FICC's organizational documents accurately describe FICC's organizational structure and that such organizational documents remain clear, transparent, and consistent. In addition, FICC believes the proposed changes to restate the Certificate of Incorporation to simplify this governing document would enhance the clarity, transparency, and readability of this governing document. Therefore, FICC believes these proposed changes are consistent with Rule 17Ad-22(e)(1) because they are designed to ensure that FICC's organizational documents remain well-founded, transparent and enforceable in all relevant jurisdictions.<sup>7</sup>

Rule 17Ad-22(e)(2) requires that FICC establish, implement, maintain and enforce written policies and procedures to provide for governance arrangements that, among other things, (1) are clear and transparent, (2) support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of owners and participants, and (3) specify clear and direct lines of responsibility.<sup>8</sup> FICC believes the (a) proposed changes to the By-Laws described above, (b) restatement of the Certificate of Incorporation, and (c) incorporation by reference of the By-Laws and the Restated Certificate of Incorporation in the GSD Rules and MBSD Rules are designed to be consistent with Rule 17Ad-22(e)(2).<sup>9</sup> Specifically, FICC believes that the proposed changes to the By-Laws regarding the titles or offices and the related powers and duties of various officers and the Board would enhance clarity and transparency because they would clearly and accurately set forth the organizational structure of FICC, including the roles and lines of responsibility of various officers and the Board. FICC also believes the proposed changes relating to the section describing the compensation of officers would enhance clarity and transparency regarding its compensation setting procedures 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. The proposed technical changes and corrections to the By-Laws are also designed to enhance the clarity, transparency, and readability of the By-Laws. In addition, the proposal to restate the current Certificate of Incorporation is designed to enhance the clarity, transparency, and readability of the current Certificate of Incorporation by simplifying it into one document. FICC also believes that incorporating the By-Laws and the Restated Certificate of Incorporation into the GSD Rules and MBSD Rules would enhance clarity and transparency as to FICC's organizational documents because these organizational documents would be expressly identified in the same document as the MBSD

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<sup>6</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>7</sup> Id.

<sup>8</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>9</sup> Id.



Rules and GSD Rules to which members are subject. FICC believes that, taken together, these proposed changes would facilitate the effective and efficient governance and operation of FICC and therefore would enable FICC to better serve its members. As such, FICC believes these proposed changes would also support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of its owners and participants. Therefore, FICC believes these proposed rule changes are consistent with Rule 17Ad-22(e)(2) because they are designed to enhance clarity and transparency in FICC's governance arrangements, support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of owners and participants, and specify clear and direct lines of responsibility for various officer positions and the Board within FICC's organizational structure.<sup>10</sup>

#### **4. Self-Regulatory Organization's Statement on Burden on Competition**

FICC does not believe that the proposed rule change would have any impact on competition. The proposed rule change would amend the By-Laws to: (1) accurately reflect FICC's organizational structure and reflect changes to titles or offices and the related powers and duties of the Board and various designated officers, (2) accurately reflect (a) the process that is followed for setting compensation pursuant to the Compensation Committee Charter and (b) that the Non-Executive Chairman of the Board does not receive compensation, and (3) enhance the clarity and readability of the By-Laws by making technical changes and corrections. The proposed change to restate the current Certificate of Incorporation would enhance clarity and transparency by simplifying the provisions into one document. The proposal to incorporate by reference the By-Laws and the Restated Certificate of Incorporation into the GSD Rules and the MBSD Rules would further enhance clarity and transparency because these organizational documents would be expressly identified in the GSD Rules and the MBSD Rules to which members are subject. FICC does not believe that this proposal would affect any of its current practices regarding the rights or obligations of its members. Therefore, FICC believes that the proposal would not have any effect on its members and thus, would not have any impact or burden on competition.

#### **5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

FICC has not received any written comments relating to this proposal. FICC will notify the Commission of any written comments received by it.

#### **6. Extension of Time Period for Commission Action**

FICC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act<sup>11</sup> for Commission action.

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<sup>10</sup> Id.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.
- (d) Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

Exhibit 1 – Not applicable.

Exhibit 1A – Notice of proposed rule change for publication in the Federal Register.

Exhibit 2 – Not applicable.

Exhibit 3 – Not applicable.

Exhibit 4 – Not applicable.

Exhibit 5A – Proposed changes to MBSD Rules and GSD Rules.

Exhibit 5B – Proposed changes to the By-Laws.

Exhibit 5C – Restated Certificate of Incorporation (in its entirety).

**EXHIBIT 1A**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-[\_\_\_\_\_]; File No. SR-FICC-2018-002)

[DATE]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend the By-Laws and Make Other Changes

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> notice is hereby given that on February \_\_, 2018, 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. 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

The proposed rule change would amend the FICC By-Laws (“By-Laws”) to (i) revise titles or offices and the powers and duties of the Board of Directors (“Board”) and certain designated officers of FICC, (ii) revise the section describing compensation of officers, and (iii) make certain technical changes and corrections.<sup>3</sup> The GSD Rules and

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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> The By-Laws and the Restated Certificate of Incorporation would each be incorporated by reference into the FICC Government Securities Division Rulebook (“GSD Rules”) and the FICC Mortgage-Backed Securities Division Rulebook (“MBSD Rules”).

the MBSD Rules would also be amended to incorporate by reference the By-Laws and the Restated Certificate of Incorporation.<sup>4</sup>

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.

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

1. Purpose

In FICC's review of the By-Laws, FICC has identified and is proposing the following changes to the By-Laws: (i) revising certain Board and designated officer titles or offices and updating the related powers and duties, (ii) revising the section describing the compensation of officers and (iii) making certain technical changes and corrections. Specifically, regarding the proposed changes to the Board and designated officer titles or offices and updating the related powers and duties, FICC is proposing to: (1) change the title of Chairman of the Board to Non-Executive Chairman of the Board and update the related powers and duties associated with that role due to personnel changes in FICC's management, (2) add the office of the Chief Executive Officer ("CEO"), combine the

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<sup>4</sup> The GSD Rules and the MBSD Rules are available at <http://www.dtcc.com/legal/rules-and-procedures>. The By-Laws and the Restated Certificate of Incorporation would be available at <http://www.dtcc.com/legal/rules-and-procedures>.

office of the President and the office of the Chief Executive Officer into one office (President and Chief Executive Officer) and update the related powers and duties to reflect that the two positions are now combined and are held by one individual, (3) add the office of the Chief Financial Officer (“CFO”) and delete the office of the Comptroller, (4) delete the office of the Chief Operating Officer (“COO”), (5) change the title of Vice President to Executive Director and update the related powers and duties, and (6) make other changes related to certain powers and duties of the Board and various officers, including Managing Directors, the Vice Chairman of the Corporation, the Treasurer and the Assistant Treasurer, as described in greater detail below. FICC is proposing to make these changes to the By-Laws so that the By-Laws remain consistent and accurate and FICC’s governance documents accurately reflect its management and organizational structure and the responsibilities within the purview of certain roles. FICC believes these changes would facilitate the efficient governance and operation of FICC.

The GSD Rules and MBSD Rules would also be amended to incorporate by reference the Restated Certificate of Incorporation and the By-Laws, as further described below. The current Certificate of Incorporation would be restated to streamline this document, which FICC believes would enhance clarity and transparency. The following describes the proposed changes to the By-Laws, the Certificate of Incorporation, the GSD Rules, and the MBSD Rules.

**Proposed Changes to the By-Laws**<sup>5</sup>

**A. *Changes to Certain FICC Board and Designated Officer Titles or Offices and Updates to the Related Powers and Duties***

FICC proposes to revise the titles or offices and update the related powers and duties of various designated officers and the Board, as further described below.

1. **Change the Title of Chairman of the Board to Non-Executive Chairman of the Board; Update the Powers and Duties of the Non-Executive Chairman of the Board**

FICC proposes to replace the title of Chairman of the Board with the title Non-Executive Chairman of the Board (“Non-Executive Chairman of the Board”). This change in title reflects that this position is now held by an individual who is not part of FICC’s management (i.e., a non-executive). In 2016, FICC made personnel changes. As part of these personnel changes, the individual who was serving as Chairman of the Board and who was part of FICC’s management at that time became a non-executive. FICC believed that it would be beneficial and desirable to continue to have this individual serve as chairman of the Board even though he is no longer part of FICC’s management. Therefore, FICC proposes to change the title of this position in the By-Laws to Non-Executive Chairman of the Board to reflect that this position is held by a non-executive. FICC believes this proposed change would accurately reflect this organizational change. Furthermore, FICC proposes to revise the By-Laws to enumerate the powers and duties of the Non-Executive Chairman of the Board.

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<sup>5</sup> FICC last submitted a rule filing regarding changes to the By-Laws in 2006. See Securities Exchange Act Release No. 54173 (July 19, 2006), 71 FR 42890 (July 28, 2006) (SR-DTC-2006-10, SR-FICC-2006-09, and SR-NSCC-2006-08).

To implement this proposed change, FICC would revise the By-Laws as described below.

Certain references to either Chairman or Chairman of the Board would be revised to Non-Executive Chairman of the Board in the sections of the By-Laws that would continue to apply to the Non-Executive Chairman of the Board.

Specifically, the following changes would be made:

- a. In current Section 1.2 (Special Meetings), the references to Chairman would be revised to Non-Executive Chairman of the Board by adding the word “Non-Executive” before the second reference to Chairman in the first sentence and the phrase “of the Board” after such reference. In addition, the phrase “by the Chairman” in the first sentence of current Section 1.2 (Special Meetings) would be deleted because it would be repetitive to the language that is currently included later in this section.
- b. In current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), and current Section 5.1 (Certificates for Shares), the word “Non-Executive” would be added before each reference to the Chairman of the Board.

Certain references to Chairman of the Board in the By-Laws would be deleted because such references are in the sections of the By-Laws that only apply to members of FICC management. Because the Non-Executive Chairman of the Board would not be a management position, such sections of the By-Laws would no longer be applicable. Specifically, the following changes would be made:

- a. In current Section 3.1 (General Provisions), Chairman of the Board would be removed from the list of designated officers of FICC.
- b. In current Section 3.12 (Compensation of Officers), the references to the Chairman of the Board would also be deleted because the Non-Executive Chairman of the Board does not receive compensation and because, as further described below, this section would be revised to only address the setting of compensation for the President.

Current Section 3.2 (Powers and Duties of the Chairman of the Board) would be deleted and replaced by proposed Section 2.8 (Non-Executive Chairman of the Board). Specifically, the following changes would be made:

- a. Certain powers and duties prescribed to the Chairman of the Board in current Section 3.2 (Powers and Duties of the Chairman of the Board) would remain with the Non-Executive Chairman of the Board. Such powers and duties include (i) presiding over the meetings of the stockholders and of the Board at which he is present and (ii) such other powers and duties as the Board may designate. This would be set forth in proposed Section 2.8 (Non-Executive Chairman of the Board). Furthermore, as is similarly stated in current Section 3.2 (Powers and Duties of the Chairman of the Board), proposed Section 2.8 (Non-Executive Chairman of the Board) would also state that the “performance of any such duty



by the Non-Executive Chairman of the Board shall be conclusive evidence of his power to act.”

- b. FICC would also expressly include in proposed Section 2.8 (Non-Executive Chairman of the Board) that the Non-Executive Chairman of the Board has general supervision over the Board and its activities and would provide overall leadership to the Board. Consistent with his authority to supervise and lead the Board, FICC proposes to assign the responsibility for carrying out the policies of the Board of Directors to the Non-Executive Chairman of the Board rather than the President (as is provided in current Section 3.3 (Powers and Duties of the President)). Furthermore, in current Section 3.6 (Powers and Duties of the Secretary), the power to assign additional powers and duties to the Secretary would be revised to replace the reference to President with Non-Executive Chairman of the Board. FICC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have as part of his general supervision of the Board.
- c. In addition, proposed Section 2.8 (Non-Executive Chairman of the Board) would state that, in the absence of the Non-Executive Chairman of the Board, the presiding director, as elected by the Board, shall preside at all meetings of the stockholders and of the Board at which he or she is present. Current Section 3.3 (Powers and Duties of the President) provides that, in the absence or in

ability of the Chairman of the Board, the President shall preside at all meetings of shareholders and all meetings of the Board of Directors at which he is present. Pursuant to the Board of Directors of The Depository Trust & Clearing Corporation (“DTCC”), The Depository Trust Company (“DTC”), FICC and National Securities Clearing Corporation (“NSCC”) Mission Statement and Charter (“Board Mission Statement and Charter”), FICC annually elects a presiding director to preside at meetings when the Non-Executive Chairman of the Board is absent. As such, FICC believes the proposed language described above would enhance accuracy by correcting the inconsistency between the By-Laws and the Board Mission Statement and Charter.

- d. As further described below, 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 CEO. FICC believes this authority to designate powers and duties to the President and CEO is within the scope of the supervisory role of the Non-Executive Chairman of the Board and therefore proposes to revise the By-Laws to expressly state that the Non-Executive Chairman has this authority.
- e. In current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), FICC would add the Non-Executive

Chairman of the Board to the list of individuals who have the power to assign powers and duties to Managing Directors as well as make conforming changes. FICC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have because he has general supervision over the Board.

2. Add the Office of the CEO and Combine the Office of the President and the Office of the CEO into the Office of the President and CEO; Update the Related Powers and Duties

FICC proposes 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) because one individual is the President and CEO. FICC proposes to revise the By-Laws to reflect that one individual holds the office of the President and CEO, including revising the list of designated officers in current Section 3.1 (General Provisions) to include the President and CEO. While current Section 3.3 (Powers and Duties of the President) provides that the President shall be the chief executive officer, current Section 3.1 (General Provisions) does not include CEO in the list of designated officer positions (President is currently included in this list). As such, FICC would revise certain references in the By-Laws from President to President and Chief Executive Officer. Specifically, FICC proposes to make the changes to the By-Laws that are described below.

- a. In current Section 1.2 (Special Meetings), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), current Section 3.1 (General Provisions), current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), current Section 3.7 (Powers and Duties of the Treasurer), and

current Section 3.12 (Compensation of Officers), the words “and Chief Executive Officer” would be added after each reference to President.

- b. In current Section 5.1 (Certificates for Shares), the words “the President” would be deleted and replaced by the words “President and Chief Executive Officer.”
- c. Additionally, in current Section 1.2 (Special Meetings), the phrase “, or by the President,” in the first sentence would be deleted because FICC believes it is repetitive to language that appears later in the section.

Furthermore, except as otherwise described below, the responsibilities, duties and powers granted to the President that are currently described in the By-Laws would continue to remain with the President and CEO. FICC proposes to make the following changes to the By-Laws to reflect the updated responsibilities and powers and duties that are granted to the President and CEO:

- a. A portion of current Section 3.3 (Powers and Duties of the President) would be deleted and replaced with proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer). The remaining portion of current Section 3.3 (Powers and Duties of the President) would be included in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer).

- b. Current Section 3.3 (Powers and Duties of the President) states that the President will have general supervision over the business and affairs of FICC subject to the direction of the Board. Additionally, current Section 3.3 (Powers and Duties of the President) states that the President may employ and discharge employees and agents of FICC, except such as shall be elected or appointed by the Board, and he may delegate these powers. Similarly, proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer) would state that the President and Chief Executive Officer would have general supervision over the overall business strategy, business operations, systems, customer outreach, and risk management, control and staff functions, subject to the direction of the Board and the Non-Executive Chairman of the Board. FICC believes the additional detail provided in proposed Section 3.2 (Powers and Duties of the President and CEO) would add clarity to the powers and duties associated with the role of President and Chief Executive Officer and would be consistent with the combined role. In addition, because the office of the COO would be eliminated (as described further below), the responsibility of general supervision over the operations of FICC, which is designated to the COO role in current Section 3.4 (Powers and Duties of the Chief Operating Officer), would be assigned to the President and CEO.

- c. Proposed Section 3.2 (Powers and Duties of the President and CEO) would state that the President and CEO would have such other powers and perform such other duties as the Board or the Non-Executive Chairman of the Board may designate. FICC believes this generally aligns with current Section 3.3 (Powers and Duties of the President). FICC believes that providing the Non-Executive Chairman of the Board with this additional authority to designate powers and duties to the President and CEO is within the scope of the supervisory role of the Non-Executive Chairman of the Board.
- d. As noted above, certain powers and duties listed in current Section 3.3 (Powers and Duties of the President) would be removed or assigned to another position. Specifically, as noted above, the responsibility for carrying out the policies of the Board would be assigned to the Non-Executive Chairman of the Board rather than to the President and CEO. Additionally, the statement that “performance of any such duty by the President shall be conclusive evidence of his power to act” that appears in current Section 3.3 (Powers and Duties of the President) would be removed as FICC believes it would be best practice to document specific designation of powers and/or duties made by the Board or Non-Executive Chairman of the Board to the President and CEO.

- e. As described above, in current Section 3.6 (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. FICC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have as part of his general supervision of the Board.
  - f. As described below, 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). Similarly, proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) would provide that the CFO would perform such other duties as he may agree with the President and CEO and the Board.
3. Add the Office of the CFO; Delete of the Office of the Comptroller

FICC would add the office of the CFO and assign to the CFO all of the powers and duties of the office of the chief financial officer. The CFO would, in general, have overall supervision of the financial operations of FICC.

Furthermore, references to the office of the Comptroller would be deleted. FICC does not currently have a Comptroller nor does FICC plan to appoint one.

Therefore, FICC believes it would be more accurate to remove all references to such position in the By-Laws. Specifically, FICC would revise the By-Laws as described below.

- a. In current Section 3.1 (General Provisions), CFO would be added to and Comptroller would be removed from the list of designated officers of FICC.
- b. FICC would add proposed Section 3.5 (Powers and Duties of the Chief Financial Officer). This proposed section would enumerate the powers and duties of the CFO. It would state that the CFO would have overall supervision of the financial operations of FICC and upon request, 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. FICC believes these powers and duties are appropriate for the newly created role of CFO. Proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) would also state that the CFO would report directly to the President and CEO. FICC believes it is appropriate for the CFO to report to the President and CEO and to specify this clear line of responsibility in the By-Laws.
- c. Furthermore, proposed Section 3.6 (Powers and Duties of the Treasurer) would also be revised to state that the Treasurer shall 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 to him. Because the Treasurer directly reports to the CFO, FICC believes it is



appropriate for the CFO to assign powers and duties to the Treasurer.

- d. FICC would delete current Section 3.8 (Powers and Duties of the Comptroller), which, with the elimination of the office of the Comptroller, would no longer be necessary.

4. Delete the Office of the COO

FICC would also delete references to the designated office of the COO in the By-Laws. FICC believes this change is necessary because FICC no longer has a COO nor does FICC plan to appoint one. Specifically, FICC would make the changes to the By-Laws described below.

- a. In current Section 3.1 (General Provisions), the COO would be removed from the list of designated officers of FICC.
- b. Current Section 3.4 (Powers and Duties of the Chief Operating Officer) would be deleted, which, with the elimination of the office of the COO, would no longer be necessary. The power and duty prescribed to this position (general supervision over the operations of FICC) would be assigned to the President and CEO in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer), as described above.

5. Change the Title of Vice President to Executive Director; Update the Related Powers and Duties

FICC proposes to change the title of Vice President to Executive Director and update the related powers and duties. FICC believes these changes are necessary because FICC has decided that the title of Executive Director is more

widely used in the financial services industry for roles similar to those designated as Vice Presidents. In FICC's organizational structure, Executive Directors report to Managing Directors. As such, it was decided that Executive Directors do not have sufficient seniority to call special meetings of shareholders, to preside over shareholder meetings unless specifically designated to do so by the Board, or to sign share certificates. FICC proposes to make the following changes to the By-Laws to reflect the change in the title from Vice President to Executive Director and to update the related powers and duties.

- a. In current Section 1.2 (Special Meetings), the proposed rule change would remove Vice Presidents from the list of officers authorized to call special meetings of shareholders. FICC believes that Vice Presidents do not have sufficient seniority to call special meetings of shareholders.
- b. In current Section 1.8 (Presiding Officer and Secretary), Vice President would be removed. FICC believes that a Vice President should not preside over a shareholder meeting unless specifically designated to do so by the Board.
- c. In current Section 3.1 (General Provisions), Vice Presidents would be removed from the list of designated officers of FICC. As described below, a parenthetical phrase would be added explaining that the Board's power to appoint other officers includes the power to appoint one or more Executive Directors.

- d. In current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), all references to Vice President would be deleted. Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors) currently states that Vice Presidents and Managing Directors have such powers and perform such duties as the Board or the President may assign to them.<sup>6</sup> Because individuals with the title of Executive Director report to Managing Directors, FICC believes the reference to Vice President in this section would not be necessary.
- e. In current Section 5.1 (Certificates for Shares), the reference to Vice President would be removed because Vice Presidents are no longer authorized to sign share certificates. As described above, FICC decided that they do not have sufficient seniority to do so.

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

*Managing Directors*

- a. In Section 1.8 (Presiding Officer and Secretary), the reference to the Managing Director would be removed because FICC believes a Managing Director should not preside over a shareholder meeting unless specifically designated to do so by the Board.

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<sup>6</sup> With this proposal, this reference to President would be revised to President and CEO, and the Non-Executive Chairman of the Board would be added so the Non-Executive Chairman of the Board would also be able to assign powers and duties to the Managing Directors.

- b. In current Section 2.6 (Meetings), the proposal would add Managing Directors to the list of officers authorized to call special meetings of the Board. FICC believes this proposed change would provide FICC's management with additional flexibility by enabling additional persons within senior management to call special meetings of the Board.

*Vice Chairman of the Corporation*

As described below, a parenthetical phrase would be added in current Section 3.1 (General Provisions) explaining that the Board's power to appoint other offices includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation.

*Board*

- a. In current Section 3.1 (General Provisions), FICC proposes to add a parenthetical phrase explaining that the Board's power to appoint other offices includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation and one or more Executive Directors to enhance clarity.
- b. Additionally, in current Section 3.1 (General Provisions), regarding the ability of any one person to hold more than one office, FICC proposes to enhance and clarify the exception by specifying that neither the Secretary nor any Assistant Secretary can hold the following offices: (1) Vice Chairman of the Corporation, (2) President, or (3) President and CEO. FICC

believes this proposed change is necessary to ensure that the Secretary and any Assistant Secretary would not hold those positions.

*Treasurer*

In current Section 5.1 (Certificates for Shares), FICC proposes to delete the reference to Treasurer from the list of authorized signatories because FICC expects the Secretary or an Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.

*Assistant Treasurer*

In current Section 5.1 (Certificates for Shares), FICC proposes to delete the reference to Assistant Treasurer from the list of authorized signatories because FICC expects the Secretary or an Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.

7. Revise Compensation of Officers to Compensation of the President and Chief Executive Officer

Current Section 3.12 (Compensation of Officers) would be revised to accurately reflect FICC's compensation setting practices. Current Section 3.12 states that: (i) 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 (ii) salaries of all other officers shall be fixed by the President with the approval of the Board and no officer shall be precluded from receiving a salary because he is also a director.

Current Section 3.12 would be revised to state that the Compensation Committee of the Corporation will recommend the compensation for the President and Chief Executive Officer to the Board of Directors for approval because, pursuant to the DTCC/DTC/FICC/NSCC Compensation and Human Resources Committee Charter (“Compensation Committee Charter”), this is the process that is followed. In addition, FICC also proposes to delete the language stating that salaries of all other officers shall be fixed by the President with approval of the Board and no officer shall be precluded from receiving a salary because he is also a director. FICC believes the proposed changes are appropriate because they no longer reflect FICC’s compensation setting procedures. In addition, as noted above, references to Chairman of the Board would be deleted because the Non-Executive Chairman of the Board does not receive compensation. Furthermore, the title of this section would be revised from Compensation of Officers to Compensation of the President and Chief Executive Officer because this section would no longer speak to the compensation of officers other than the President and CEO.

***B. Technical Changes and Corrections***

FICC has identified the following technical changes and/or corrections that it proposes to make to the By-Laws to enhance the clarity and readability of the By-Laws.

1. Delete Direct Reference to Statutes and Statutory Requirements

FICC would delete direct statutory references from the By-Laws as set forth below so that the By-Laws remain consistent and accurate despite any changes to a specifically cited statute. FICC believes this proposed change would also provide FICC with a broad base to act in accordance with relevant law

without violating the By-Laws and thereby also provide FICC with more flexibility. Specifically, FICC proposes to make the following changes to the By-Laws:

- a. In current Section 1.2 (Special Meetings), regarding special meetings for the election of directors, the reference to the provisions of Section 603 of the New York Business Corporation Law would be deleted and the phrase “or as required by law” would be added.
- b. In current Section 1.4 (Notice of Meetings), regarding the composition of notices for shareholder meetings, the reference to the specific provisions and requirements of Section 623 of the New York Business Corporation Law would be deleted.

2. Other Technical Changes and Corrections

In addition to the technical changes proposed above, FICC proposes to make the additional technical and grammatical changes described below.

- a. In the heading for the By-Laws, “AMENDED AND RESTATED” would be deleted and “BY-LAWS OF FIXED INCOME CLEARING CORPORATION” would be revised to boldfaced text.
- b. In the headings for Articles I through VIII, (i) each of “ARTICLE I,” “ARTICLE II,” “ARTICLE III,” “ARTICLE IV,” “ARTICLE V,” “ARTICLE VI,” “ARTICLE VII,” and “ARTICLE VIII”

would be revised to boldfaced text and (ii) each of the article titles would be revised to boldfaced text to enhance readability.

- c. In current Sections 1.1 through 2.11 and current Sections 4.1 through 5.4, the section number and section titles would be revised to italicized text to be consistent with current Sections 3.1 through 3.12.
- d. In current Section 1.2 (Special Meetings), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), current Section 3.1 (General Provisions), current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), current Section 3.6 (Powers and Duties of the Treasurer), current Section 3.12 (Compensation of Officers), and current Section 5.1 (Certificates for Shares), conforming grammatical corrections would be made.
- e. Current Section 2.8 (Executive Committee) through current Section 2.11 (Compensation of and Loans to Directors) would be renumbered to reflect the addition of proposed Section 2.8 (Non-Executive Chairman of the Board).
- f. In current Section 2.11 (Compensation of and Loans to Directors), “form” would be deleted and replaced with “from” to correct a typographical error.
- g. Current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors) through current Section 3.12 (Compensation



of Officers) would be renumbered to reflect the addition of proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer) and proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) and the deletion of current Section 3.2 (Powers and Duties of the Chairman of the Board), current Section 3.3 (Powers and Duties of the President), current Section 3.4 (Powers and Duties of the Chief Operating Officer) and current Section 3.8 (Powers and Duties of the Comptroller).

- h. In current Section 4.1 (Directors and Officers), “corporation” would be deleted and replaced with “Corporation” to correct a typographical error.
- i. Proposed Article IX (Gender References) would be added to clarify that the By-Laws are intended to be gender neutral with any reference to one gender deemed to include the other.

**Proposed Changes to the Certificate of Incorporation**

The current Certificate of Incorporation is comprised of several documents, including amendments that have been made throughout the history of FICC. In order to streamline this Certificate of Incorporation into one updated document that includes all provisions, FICC would restate the current Certificate of Incorporation as proposed in Exhibit 5C.

**Proposed Changes to the GSD Rules and MBSD Rules**

FICC proposes to add a section entitled “By-Laws and Restated Certificate of Incorporation” to each of the GSD Rules and MBSD Rules. This section would indicate

that the Restated Certificate of Incorporation and the By-Laws are incorporated by reference.

2. Statutory Basis

Section 17A(b)(3)(A) of the Act requires, among other things, that a clearing agency is so organized to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.<sup>7</sup> FICC believes the (a) proposed changes to the By-Laws described above, (b) restatement of the Certificate of Incorporation, and (c) incorporation by reference of the By-Laws and the Restated Certificate of Incorporation in the GSD Rules and MBSD Rules are consistent with this provision. Specifically, FICC believes that the (1) change of title from Chairman of the Board to Non-Executive Chairman of the Board and changes to the related powers and duties, (2) addition of the office of the CEO, the combination of the offices of the President and CEO and changes to the related powers and duties, (3) addition of the office of the CFO and deletion of the office of the Comptroller, (4) change of title from Vice President to Executive Director and changes to the related powers and duties, (5) deletion of the office of the COO, (6) changes to the powers and duties of the Board, (7) changes to the powers and duties of Managing Directors, (8) changes to the powers and duties of Vice Chairman of the Corporation, (9) changes to the powers and duties of the Treasurer, and (10) changes to the powers and duties of the Assistant Treasurer are designed to facilitate the effective and efficient governance and operation of FICC and accurately reflect FICC's current Board and management structure. FICC also believes the changes to the powers and duties of the Board and designated officer positions are

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<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(A).

appropriate and aligned with each role. Furthermore, these proposed changes are intended to promote additional clarity as to the responsibilities of the Board and certain designated officers. FICC believes the proposed changes to the section describing the compensation of officers are designed to accurately reflect: (1) the process that is followed for setting compensation pursuant to the Compensation Committee Charter and (2) that the Non-Executive Chairman of the Board does not receive compensation and would promote additional clarity as to the setting of compensation of the President and CEO and Non-Executive Chairman of the Board. FICC also believes (1) the technical changes and corrections to the By-Laws and (2) the restatement of the Certificate of Incorporation into a simpler document would enhance clarity and transparency in FICC's organizational documents. Similarly, FICC believes incorporating the By-Laws and the Restated Certificate of Incorporation into the GSD Rules and the MBSD Rules would enhance clarity and transparency regarding FICC's organizational documents because these organizational documents would be expressly identified in the same document as the MBSD Rules and GSD Rules to which members are subject. Therefore, FICC believes these proposed changes are consistent with the requirement that FICC is so organized to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.

Rule 17Ad-22(e)(1) under the Act requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.<sup>8</sup> FICC believes the (1) proposed changes to the

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<sup>8</sup> 17 CFR 240.17Ad-22(e)(1).

titles or offices and the related powers and duties of the Board and certain officers and (2) proposed technical changes and corrections to the By-Laws are designed to ensure that FICC's organizational documents accurately describe FICC's organizational structure and that such organizational documents remain clear, transparent, and consistent. In addition, FICC believes the proposed changes to restate the Certificate of Incorporation to simplify this governing document would enhance the clarity, transparency, and readability of this governing document. Therefore, FICC believes these proposed changes are consistent with Rule 17Ad-22(e)(1) because they are designed to ensure that FICC's organizational documents remain well-founded, transparent and enforceable in all relevant jurisdictions.<sup>9</sup>

Rule 17Ad-22(e)(2) requires that FICC establish, implement, maintain and enforce written policies and procedures to provide for governance arrangements that, among other things, (1) are clear and transparent, (2) support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of owners and participants, and (3) specify clear and direct lines of responsibility.<sup>10</sup> FICC believes the (a) proposed changes to the By-Laws described above, (b) restatement of the Certificate of Incorporation, and (c) incorporation by reference of the By-Laws and the Restated Certificate of Incorporation in the GSD Rules and MBSD Rules are designed to be consistent with Rule 17Ad-22(e)(2).<sup>11</sup> Specifically, FICC believes that the proposed changes to the By-Laws regarding the titles or offices

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<sup>9</sup> Id.

<sup>10</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>11</sup> Id.

and the related powers and duties of various officers and the Board would enhance clarity and transparency because they would clearly and accurately set forth the organizational structure of FICC, including the roles and lines of responsibility of various officers and the Board. FICC also believes the proposed changes relating to the section describing the compensation of officers would enhance clarity and transparency regarding its compensation setting procedures 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. The proposed technical changes and corrections to the By-Laws are also designed to enhance the clarity, transparency, and readability of the By-Laws. In addition, the proposal to restate the current Certificate of Incorporation is designed to enhance the clarity, transparency, and readability of the current Certificate of Incorporation by simplifying it into one document. FICC also believes that incorporating the By-Laws and the Restated Certificate of Incorporation into the GSD Rules and MBSD Rules would enhance clarity and transparency as to FICC's organizational documents because these organizational documents would be expressly identified in the same document as the MBSD Rules and GSD Rules to which members are subject. FICC believes that, taken together, these proposed changes would facilitate the effective and efficient governance and operation of FICC and therefore would enable FICC to better serve its members. As such, FICC believes these proposed changes would also support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of its owners and participants. Therefore, FICC believes these proposed rule changes are consistent with Rule 17Ad-22(e)(2) because they are designed to enhance

clarity and transparency in FICC's governance arrangements, support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of owners and participants, and specify clear and direct lines of responsibility for various officer positions and the Board within FICC's organizational structure.<sup>12</sup>

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

FICC does not believe that the proposed rule change would have any impact on competition. The proposed rule change would amend the By-Laws to: (1) accurately reflect FICC's organizational structure and reflect changes to titles or offices and the related powers and duties of the Board and various designated officers, (2) accurately reflect (a) the process that is followed for setting compensation pursuant to the Compensation Committee Charter and (b) that the Non-Executive Chairman of the Board does not receive compensation, and (3) enhance the clarity and readability of the By-Laws by making technical changes and corrections. The proposed change to restate the current Certificate of Incorporation would enhance clarity and transparency by simplifying the provisions into one document. The proposal to incorporate by reference the By-Laws and the Restated Certificate of Incorporation into the GSD Rules and the MBSD Rules would further enhance clarity and transparency because these organizational documents would be expressly identified in the GSD Rules and the MBSD Rules to which members are subject. FICC does not believe that this proposal would affect any of its current practices regarding the rights or obligations of its members.

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<sup>12</sup> Id.

Therefore, FICC believes that the proposal would not have any effect on its members and thus, would not have any impact or burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

FICC has not received any written comments relating to this proposal. FICC will notify the Commission of any written comments received by it.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change

should be disapproved.

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](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2018-002 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FICC-2018-002. 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-2018-002 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.<sup>13</sup>

Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).

**Bold and underlined text** indicates proposed added language

**~~Bold and strikethrough text~~** indicates proposed deleted language

**FIXED INCOME CLEARING CORPORATION**  
**MORTGAGE-BACKED SECURITIES DIVISION**  
**CLEARING RULES**

\* \* \*

**INTERPRETATIVE GUIDANCE WITH RESPECT TO WATCH LIST  
CONSEQUENCES**

\* \* \*

**BY-LAWS AND RESTATED CERTIFICATE OF INCORPORATION**

**The By-Laws of the Corporation and the Restated Certificate of Incorporation of  
the Corporation are incorporated by reference.**

**FIXED INCOME CLEARING CORPORATION**  
**GOVERNMENT SECURITIES DIVISION RULEBOOK**

\* \* \*

**INTERPRETATIVE GUIDANCE WITH RESPECT TO WATCH LIST  
CONSEQUENCES**

\* \* \*

**BY-LAWS AND RESTATED CERTIFICATE OF INCORPORATION**

**The By-Laws of the Corporation and the Restated Certificate of Incorporation of  
the Corporation are incorporated by reference.**

~~AMENDED AND RESTATED~~  
~~BY-LAWS~~  
OF  
~~FIXED INCOME CLEARING CORPORATION~~  
BY-LAWS  
OF  
FIXED INCOME CLEARING CORPORATION

~~ARTICLE I~~ARTICLE I

~~Shareholders~~Shareholders

~~Section 1.1~~Section 1.1. ~~Annual Meeting~~Annual Meeting. The annual meeting of the shareholders of the Corporation for the election of directors and the transaction of such other business as may properly come before the meeting shall be held at such hour and place within or without the State of New York as the Board of Directors shall determine, or, if not so determined at 10:00 A.M. on the last day in April at the principal office of the Corporation, or, if that day shall be a Saturday, Sunday or a legal holiday in the place where the meeting is to be held, on the immediately preceding day not a Saturday, Sunday or a legal holiday.

~~Section 1.2~~Section 1.2. ~~Special Meetings~~Special Meetings. Special meetings of the shareholders may be called by the Board of Directors, ~~by the Chairman, or by the President,~~ and shall be called by the Non-Executive Chairman of the Board, the President and Chief Executive Officer, a Managing Director, ~~a Vice President~~ or the Secretary at the written demand of a majority of the Board of Directors or at the written demand of the holders of a majority of all outstanding shares entitled to vote on the action proposed to be taken at such meeting, or as required by law or in the case of special meetings for the election of directors pursuant to Section 603 of the Business Corporation Law, the percentage provided therein. ~~Any such call or demand shall state the purpose or purposes of the proposed meeting.~~ On failure of any officer above specified to call such special meeting when duly demanded, any signer of such demand may call such special meeting and give notice thereof. Special meetings shall be held on the date specified in the notice thereof at such hour and place within or without the State of New York as may be specified in such notice. At any special meeting, only such business may be transacted which is related to the purpose or purposes set forth in the notice thereof, but any special meeting may be called and held in conjunction with an annual meeting of the shareholders.

~~Section 1.3~~Section 1.3. ~~Record Date for Meetings and Other Purposes~~Record Date for Meetings and Other Purposes. For the purpose of determining the shareholders

entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining shareholders entitled to receive payment of any dividend or the allotment of any rights, or for the purpose of any other action, the Board of Directors may fix, in advance, a date as the record date for any such determination of shareholders. Such date shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. If no record date is so fixed by the Board of Directors, (a) the record date for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding (i) the day on which notice is given, or (ii) the day on which the meeting is held if notice is not given by reason of due waiver thereof, and (b) the record date for determining shareholders for any other purpose shall be at the close of business on the day on which the resolution of the Board of Directors relating thereto is adopted.

A determination of shareholders of record entitled to notice of or to vote at any meeting of shareholders, made in accordance with this Section, shall apply to any adjournment thereof, unless the Board of Directors fixes a new record date under this Section for the adjourned meeting.

~~Section 1.4~~Section 1.4. ~~Notice of Meetings~~Notice of Meetings. Whenever shareholders are required or permitted to take any action at a meeting, written notice shall be given stating the place, date and hour of the meeting and, unless it is the annual meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting (including any such meeting to be held in conjunction with an annual meeting) shall also state the purpose or purposes for which the meeting is called. ~~If, at any meeting, action is proposed to be taken which would, if taken, entitle shareholders fulfilling the requirements of Section 623 of the New York Business Corporation Law to receive payment for their shares, the notice of such meeting shall include a statement of that purpose and to that effect.~~—A copy of the notice of any meeting shall be given, not less than ten nor more than sixty days before the date of the meeting, to each shareholder entitled to vote, at such meeting. If mailed, such notice shall be given by sending it through the United States Postal Service, with postage thereon prepaid, directed to the shareholder at his or her address as it appears on the record of shareholders, or, if he or she shall have filed with the Secretary of the Corporation a written request that notices to him or her be mailed to some other address, then directed to him or her at such address. If transmitted electronically, such notice shall be given by sending electronic mail directed to the shareholder's electronic mail address as supplied by the shareholder to the Secretary of the Corporation or as otherwise directed pursuant to the shareholder's authorization or instructions.

When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting, if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment, the Board of Directors fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date entitled to notice under this Section.

~~Section 1.5~~Section 1.5. ~~Waivers of Notice~~Waivers of Notice. Notice of any meeting of shareholders need not be given to any shareholder who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any shareholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him or her.

~~Section 1.6~~Section 1.6. ~~List of Shareholders at Meetings~~List of Shareholders at Meetings. A list of shareholders as of the record date, certified by the Secretary or by a transfer agent, shall be produced at any meeting of shareholders upon the request thereat or prior thereto of any shareholder. If the right to vote at any meeting is challenged, the inspectors of election, or person presiding thereat, shall require such list of shareholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be shareholders entitled to vote thereat may vote at such meeting.

~~Section 1.7~~Section 1.7. ~~Quorum at Meetings~~Quorum at Meetings. Except as otherwise provided by law or by the certificate of incorporation, the holders of a majority of the shares entitled to vote thereat shall constitute a quorum at any meeting of shareholders for the transaction of any business, but the shareholders present may adjourn any meeting to another time or place despite the absence of a quorum. When a quorum is once present to organize a meeting, it shall not be broken by the subsequent withdrawal of any shareholders.

~~Section 1.8~~Section 1.8. ~~Presiding Officer and Secretary~~Presiding Officer and Secretary. At any meeting of the shareholders, if ~~neither~~none of the Non-Executive Chairman of the Board ~~nor~~, the President ~~nor a Managing Director nor a Vice President nor and~~ Chief Executive Officer or other person designated by the Board of Directors to preside at the meeting ~~shall be~~is present, the shareholders shall appoint a presiding officer for the meeting. If neither the Secretary nor an Assistant Secretary ~~be~~is present, the appointee of the person presiding at the meeting shall act as secretary of the meeting.

~~Section 1.9~~Section 1.9. ~~Proxies~~Proxies. Every shareholder entitled to vote at a meeting of shareholders or to express consent or dissent without a meeting may authorize another person or persons to act for him or her by proxy. Every proxy shall be signed by the shareholder or his or her attorney-in-fact. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided by law. Proxies shall be delivered to the Secretary of the Corporation or, if inspectors are appointed to act at a meeting, to the inspectors.

~~Section 1.10~~Section 1.10. ~~Inspectors of Election~~Inspectors of Election. The Board of Directors, in advance of any meeting of Shareholders, may appoint one or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at the meeting may, and on the request of any shareholder entitled to vote thereat shall, appoint one or more inspectors. In case any person appointed fails to appear or act, the vacancy may be filled by appointment made by the Board in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting



with strict impartiality and according to the best of his or her ability. No director or officer of the Corporation shall be eligible to act as an inspector of an election of directors.

The inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. On request of the person presiding at the meeting or any shareholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a certificate of any fact found by them.

~~Section 1.11~~Section 1.11. ~~Voting~~Voting. Whenever directors are to be elected by the shareholders, they shall be elected by a plurality of the votes cast at a meeting of shareholders by the holders of shares entitled to vote in the election. Whenever any corporate action, other than the election of directors, is to be taken by vote of the shareholders, it shall, except as otherwise required by law or by the certificate of incorporation, be authorized by a majority of the votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon.

Except as otherwise provided by law, every holder of record of shares of the Corporation entitled to vote on any matter at any meeting of shareholders shall be entitled to one vote for every such share standing in his or her name on the record of shareholders of the Corporation on the record date for the determination of the shareholders entitled to notice of or to vote at the meeting.

## ~~ARTICLE I~~ARTICLE II

### ~~Board of Directors~~Board of Directors

~~Section 2.1~~Section 2.1. ~~Number of Directors~~Number of Directors. The entire Board shall consist of a minimum of fifteen and a maximum of twenty-five directors, as the Board shall, from time to time, determine. The minimum and maximum number of directors may be changed at any time and from time to time in accordance with Article VIII. Unless and until changed in accordance with this Section the number of directors constituting the entire Board shall continue in effect and no further action shall be required to fix such number at any meeting of the shareholders for the election of directors.

~~Section 2.2~~Section 2.2. ~~Election and Term of Directors~~Election and Term of Directors. At each annual meeting of shareholders, directors shall be elected to hold office until the next annual meeting. Each such director shall hold office from the time of his or her election and qualification until the annual meeting of shareholders next succeeding his or her election and until his or her successor has been elected and qualified.

~~Section 2.3~~Section 2.3. ~~Newly-Created Directorships and Vacancies~~Newly-Created Directorships and Vacancies. Newly-created directorships resulting from an increase in the number of directors and vacancies occurring in the Board for any reason, including the removal of directors by the shareholders without cause and by the shareholders or the Board of

Directors for cause, may be filled only by vote of the Board or of the shareholders. If the number of the directors then in office is less than a quorum, such newly created directorships and vacancies may be filled by vote of a majority of the directors then in office. A director elected to fill a vacancy shall hold office until the next annual meeting of shareholders and until his or her successor has been elected and qualified.

~~Section 2.4~~Section 2.4.      ~~Resignations~~Resignations. Any director may resign from office at any time by delivering his or her resignation in writing to the Corporation, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

~~Section 2.5~~Section 2.5.      ~~Removal of Directors~~Removal of Directors. Except as otherwise provided by law, any or all of the directors may be removed, for cause, by vote of the shareholders or the Board of Directors and may be removed, without cause, by vote of the shareholders.

~~Section 2.6~~Section 2.6.      ~~Meetings~~Meetings. Meetings of the Board, regular or special, may be held at any place within or without the State of New York as the Board from time to time may fix or as shall be specified in the respective notice of waivers of notice thereof. Any meeting of the Board or any committee thereof may be conducted by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation in a meeting by such means shall constitute presence in person at such meeting. The Board may by resolution fix times and places for regular meetings of the Board and no notice of such meetings need be given. Special meetings of the Board shall be held whenever called by the Non-Executive Chairman of the Board, the President and Chief Executive Officer, a Managing Director or by at least one-third of the directors for the time being in office. Notice of each such meeting shall be given by the Secretary or by a person calling the meeting to each director by mailing the same not later than the second day before the meeting, or by telegraphing, cabling, telephoning, faxing, electronically transmitting or personally delivering the same not later than one day before the meeting. Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.

Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or such committee consent in writing to the adoption of a resolution authorizing such action. Each resolution so adopted and the written consents thereto by members of the Board or such committee shall be filed with the minutes of the proceedings of the Board or such committee.

~~Section 2.7~~Section 2.7.      ~~Quorum and Voting~~Quorum and Voting. Except as otherwise provided by the certificate of incorporation, a majority of the Directors of the Board then in office shall constitute a quorum for the transaction of business or of any specified item of business; provided, however, that when a majority of the entire Board is once present to organize a meeting, one-third of the entire Board shall thereafter constitute a quorum for the transaction of business or any specified item of business at such meeting. Except as otherwise provided by law or by the certificate of incorporation or by these By-Laws, the vote of a majority of the directors

present at a meeting at the time of the vote, if a quorum is present at such time, shall be the act of the Board; but provided that a majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. No notice of any such adjournment need be given.

**Section 2.8. Non-Executive Chairman of the Board.** ~~The Non-Executive Chairman of the Board shall be responsible for carrying out the policies of the Board. He shall have general supervision over the Board and its activities, and shall provide overall leadership to the Board. He shall preside at all meetings of the stockholders and of the Board at which he is present. The Non-Executive Chairman of the Board shall have such other powers and perform such other duties as the Board may designate. The performance of any such duty by the Non-Executive Chairman of the Board shall be conclusive evidence of his power to act.~~

**In the absence of the Non-Executive Chairman of the Board, the presiding director, as elected by the Board, shall preside at all meetings of the stockholders and of the Board at which he or she is present.**

~~Section 2.8~~**Section 2.9. Executive Committee**~~Executive Committee.~~ The Board, by resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee, consisting of five or more directors, which, to the extent provided in the resolution and to the extent permitted by law, shall have all the authority of the Board between meetings of the Board. The Board may designate one or more directors as alternate members of the Executive Committee, who may replace any absent member or members at any meeting of the Executive Committee. Members of the Executive Committee shall serve at the pleasure of the Board.

~~Section 2.9~~**Section 2.10. Audit Committee**~~Audit Committee.~~ The Board of Directors may appoint an Audit Committee consisting of three or more directors other than officers of the Corporation or of The Depository Trust & Clearing Corporation. Members of the Audit Committee shall serve at the pleasure of the Board. The Audit Committee shall review with the Corporation's independent certified public accountants the scope of their auditing procedures, the financial statements of the Corporation which the accountants propose to certify, the proposed certification thereof and such other matters relating to the auditing of the Corporation by its independent certified public accountants as such Committee shall deem appropriate, and shall have such other and further duties and powers as may be delegated to it by resolution of the Board of Directors from time to time. The Board may designate one or more directors as alternate members of the Audit Committee, who may replace any absent member or members at any meeting of the Audit Committee.

~~Section 2.10~~**Section 2.11. Other Committees**~~Other Committees.~~ The Board of Directors may also appoint or provide for such other committees consisting of such directors, officers or other persons and having such powers and functions in the management of the Corporation as the Board of Directors may see fit.

~~Section 2.11~~**Section 2.12. Compensation of and Loans to Directors**~~Compensation of and Loans to Directors.~~ No loan shall be made by the Corporation to any director. Directors

may receive compensation for services to the Corporation in their capacities as directors or otherwise in such amounts as may be fixed ~~form~~from time to time by the Board.

### ~~ARTICLE III~~ARTICLE III

#### ~~Officers, Agents and Employees~~Officers, Agents and Employees

*Section 3.1. General Provisions.* The officers of the Corporation shall be ~~a Chairman of the Board and~~ a President, ~~each of whom and~~ Chief Executive Officer, who shall be elected by the Board of Directors from among its own number, ~~a Chief Operating Officer and~~ one or more ~~Vice Presidents and/or~~ Managing Directors, a Secretary, a Chief Financial Officer, a Treasurer, ~~a Comptroller~~ and an Auditor, and may include one or more Assistant Secretaries and one or more Assistant Treasurers. The officers shall be elected by the Board at the first meeting of the Board after the annual meeting of the shareholders in each year. The Board may elect or appoint other officers (including, but not limited to, a Vice Chairman of the Corporation, and one or more Executive Directors), ~~the Board may prescribe~~ agents and employees, who shall have such authority and perform such duties as may be prescribed by the Board. Each officer shall hold office for the term for which he is elected or appointed and until his successor has been elected or appointed and qualified. Any two or more offices may be held by the same person, except ~~the offices of President and Secretary~~ that neither the Secretary nor any Assistant Secretary shall be the Vice Chairman of the Corporation, or the President and Chief Executive Officer. Any officer, agent or employee of the Corporation may be removed, or his authority suspended, by the Board with or without cause. Such removal or suspension of authority without cause shall be without prejudice to such person's contract rights, if any, but the election or appointment of any person as an officer, agent or employee of the Corporation shall not be deemed of itself to create contract rights. The Board may require any officer, agent or employee to give security for the faithful performance of his duties.

~~*Section 3.2 Powers and Duties of the Chairman of the Board.* The Chairman of the Board shall preside at all meetings of shareholders and all meetings of the Board of Directors at which he is present. The Chairman of the Board shall have such other powers and perform such other duties as the Board may assign to him. The performance of any such other duty by the Chairman of the Board shall be conclusive evidence of his power to act.~~

~~*Section 3.3 Powers and Duties of the President.* The President shall be the chief executive officer of the Corporation and shall have the responsibility for carrying out the policies of the Board of Directors. Subject to the direction of the Board, the President shall have general supervision over the business and affairs of the Corporation. He may employ and discharge employees and agents of the Corporation, except such as shall be elected or appointed by the Board, and he may delegate these powers. In the absence or inability to act of the Chairman of the Board, the President shall preside at all meetings of shareholders and all meetings of the Board of Directors at which he is present.~~

*Section 3.2. Powers and Duties of the President and Chief Executive Officer.* The President and Chief Executive Officer shall have general supervision over the overall

**business strategy, business operations, systems, customer outreach, and risk management, control and staff functions (including, but not limited to, compliance, internal audit, finance, legal and human resources) of the Corporation, subject to the direction of the Board and the Non-Executive Chairman of the Board.**

**He shall have such other powers and perform such other duties as the Board or the Non-Executive Chairman of the Board may designate.** The President **and Chief Executive Officer** may vote the shares or other securities of any other domestic or foreign corporation of any type or kind which may at any time be owned by the Corporation, may execute any shareholders' or other consents in respect thereof and may in his discretion delegate such powers by executing proxies, or otherwise, on behalf of the Corporation. The Board, by resolution from time to time, may confer like powers upon any other person or persons.

~~The President shall have such other powers and perform such other duties as the Board may assign to him. The performance of any such other duty by the President shall be conclusive evidence of his power to act.~~

~~*Section 3.4. Powers and Duties of the Chief Operating Officer.* Subject to the direction of the Board of Directors and the President, the Chief Operating Officer shall have general supervision over the operations of the Corporation. In the absence or inability to act of the President, the Chief Operating Officer may perform all the duties and exercise all the powers of the President. The Chief Operating Officer shall have such other powers and perform such other duties as the Board may assign to him. The performance of any such other duty by the Chief Operating Officer shall be conclusive evidence of his power to act.~~

~~*Section 3.5.3. Powers and Duties of Vice Presidents and Managing Directors.* Each Vice President or Managing Director shall have such powers and perform such duties as the Board of Directors **or the Non-Executive Chairman of the Board** or the President **and Chief Executive Officer** may assign to him.~~

~~*Section 3.6.3. Powers and Duties of the Secretary.* The Secretary shall have charge of the minutes of all proceedings of the shareholders and of the Board of Directors. He shall attend to the giving of all notices to shareholders and directors. He shall have charge of the seal of the Corporation and shall attest the same by his signature whenever required. He shall have charge of the record of shareholders of the Corporation, and of such other books and papers as the Board may direct. He shall have all such powers and duties as generally are incident to the position of Secretary or as the Board or the **President Non-Executive Chairman of the Board** may assign to him.~~

**Section 3.5. Powers and Duties of the Chief Financial Officer.** **The Chief Financial Officer shall perform all the powers and duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as he may agree with the President and Chief Executive Officer or as the Board may from time to time determine. The Chief Financial Officer shall report directly to the President and Chief Executive Officer.**

*Section ~~3.73.6~~. Powers and Duties of the Treasurer.* The Treasurer shall have charge of all funds and securities beneficially owned by the Corporation, shall endorse the same for deposit or collection when necessary and deposit the same to the credit of the Corporation in such banks or depositories as the Board of Directors may authorize. He may endorse all commercial documents requiring endorsements for or on behalf of the Corporation and may sign all receipts and vouchers for payments made to the Corporation. He shall have all such powers and duties as generally are incident to the position of Treasurer or as the Board, ~~or the President~~ **and Chief Executive Officer or the Chief Financial Officer** may assign to him.

~~*Section 3.8. Powers and Duties of the Comptroller.* The Comptroller shall have charge of the accounting operations and procedures of the Corporation. He shall have all such powers and duties as generally are incident to the position of Comptroller or as the Board of Directors or the President may assign to him. He shall render annually to the Board a report relating to the general condition and internal operations of the Corporation.~~

*Section ~~3.93.7~~. Powers and Duties of the Auditor.* The Auditor shall make such examination of the accounts, records and transactions of the Corporation as may be required by the Board of Directors and he shall perform such other duties as are prescribed in an audit program approved by the Board. He shall be free to examine any department or section of the Corporation routinely without previous officer consultation. He shall maintain a summary record of dates of completed audits, and shall make periodic reports to the Board or a committee thereof which shall include such suggestions and recommendations which he may consider advisable to make. He shall make periodic reports to the Board or a committee thereof on subjects specified by the Board or a committee thereof or on those chosen by the Auditor on the status of any audit in progress and shall cooperate and coordinate with the Board or a committee thereof in the performance of his duties.

*Section ~~3.103.8~~. Powers and Duties of Assistant Secretaries.* In the absence or inability to act of the Secretary, any Assistant Secretary may perform all the duties and exercise all the powers of the Secretary. The performance of any such duty shall be conclusive evidence of his power to act. An Assistant Secretary shall also perform such other duties as the Board of Directors or the Secretary may assign to him.

*Section ~~3.113.9~~. Powers and Duties of Assistant Treasurers.* In the absence or inability to act of the Treasurer, an Assistant Treasurer may perform all the duties and exercise all the powers of the Treasurer. The performance of any such duty shall be conclusive evidence of his power to act. An Assistant Treasurer shall also perform such other duties as the Board of Directors or the Treasurer may assign to him.

*Section ~~3.123.10~~. Compensation of the President and Chief Executive Officer-Officers.* The **Compensation Committee shall recommend** compensation, ~~if any, of the Chairman of the Board, and for~~ the President **and Chief Executive Officer** ~~shall be fixed by a majority (which shall not include the Chairman of the Board or the President) of the entire to the Board of Directors for approval. Salaries of all other officers shall be fixed by the President with the approval of the Board and no officer shall be precluded from receiving a salary because he is also a director.~~

~~ARTICLE IV~~ ARTICLE IV

~~Indemnification~~ Indemnification

~~Section 4.1~~ Section 4.1. ~~Directors and Officers~~ Directors and Officers. The Corporation shall, to the fullest extent to which it is empowered to do so by the New York Business Corporation Law or any other applicable laws, as may from time to time be in effect, indemnify any person who was or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she, or his or her testator or intestate, is or was a director or officer of the ~~corporation~~ Corporation, is or was a member of a committee established by the Board of Directors of the Corporation, or is or was serving any other corporation, domestic or foreign, partnership, joint venture, trust, employee benefit plan or other business enterprise or entity in any capacity at the request of the Corporation, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding. The Corporation may advance his or her related expenses and secure appropriate indemnification insurance, to the full extent permitted by law.

~~Section 4.2~~ Section 4.2. ~~Contract with the Corporation~~ Contract with the Corporation. The provisions of this Article IV shall be deemed to be a contract between the corporation and each director or officer who serves in any such capacity at any time while this Article and the relevant provisions of the New York Business Corporation Law or other applicable law, if any, are in effect, and any repeal or modification of any such law or of this Article IV shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought or threatened based on whole or in part upon any such state of facts.

~~Section 4.3~~ Section 4.3. ~~Employees~~ Employees. The Corporation shall indemnify an employee or his or her estate who has been made, or is threatened to be made, a party to any action or proceeding, whether civil or criminal, by reason of the fact of his or her (or his or her testator's or intestate's) employment as a member of the Corporate legal staff or his or her (or his or her testator's or intestate's) service when requested by the Corporation to serve any other corporation, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan, or other business enterprise or entity in any capacity, when said employee has acted in good faith within the scope of his or her employment. The Corporation may advance his or her related expenses and secure appropriate indemnification insurance, to the full extent permitted by law.

~~Section 4.4~~ Section 4.4. ~~Other Rights of Indemnification~~ Other Rights of Indemnification. The indemnification provided or permitted by this Article IV shall not be deemed exclusive of any other rights to which those indemnified may be entitled by law or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

~~ARTICLE V~~ ARTICLE V

~~Shares of the Corporation~~ Shares of the Corporation

~~Section 5.1~~ Section 5.1. ~~Certificates for Shares~~ Certificates for Shares. The shares of the Corporation shall be represented by certificates in such form as shall be determined by the Board of Directors. Such certificates shall be signed by the President and Chief Executive Officer or the Non-Executive Chairman of the Board, ~~the President or a Vice President~~ and by the Secretary or an Assistant Secretary ~~or the Treasurer or an Assistant Treasurer of the Corporation~~, may be sealed with the seal of the Corporation or a facsimile thereof, and shall contain such information as is required by law to be stated thereon. All certificates for shares shall be consecutively numbered or otherwise identified. All certificates exchanged or surrendered to the Corporation for transfer shall be canceled.

~~Section 5.2~~ Section 5.2. ~~Record of Shareholders~~ Record of Shareholders. The Corporation shall keep at the office of the Corporation in the State of New York a record containing the names and addresses of all shareholders, the number and class of shares held by each and the dates when they respectively became the owners of record thereof. The Corporation shall be entitled to treat the persons in whose names shares stand on the record of shareholders as the owners thereof for all purposes.

~~Section 5.3~~ Section 5.3. ~~Transfers of Shares~~ Transfers of Shares. Transfers of shares on the record of shareholders of the Corporation shall be made only upon surrender to the Corporation of the certificate or certificates for such shares, duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer.

~~Section 5.4~~ Section 5.4. ~~Lost, Stolen or Destroyed Certificates~~ Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate for shares in place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Board may require the owner of the lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction or any such certificate or the issuance of any such new certificate. The Board may require such owner to satisfy other reasonable requirements.

~~ARTICLE VI~~ ARTICLE VI

~~Seal~~ Seal

The seal of the Corporation shall be circular in form and contain the name of the Corporation, the words "Corporate Seal" and "New York" and the year the Corporation was formed in the center. The Corporation may use the seal by causing it or a facsimile to be affixed or impressed or reproduced in any manner.



**ARTICLE VII**

**Checks, Notes, Drafts, etc.**

Checks, notes, drafts, acceptances, bills of exchange and other orders or obligations for the payment of money shall be signed by such officer or officers or person or persons as the Board of Directors shall from time to time determine.

**ARTICLE VIII**

**Amendments**

These By-Laws may be amended or repealed, and new By-Laws may be adopted, (1) by vote of the holders of a majority of all the outstanding shares at the time entitled to vote in the election of any directors, at any annual meeting of the shareholders, or at any special meeting of the shareholders called for that purpose, or (2) by the Board of Directors except as herein provided. The Board may not adopt, amend or repeal any By-Laws relating to (1) the right of shareholders to call a special meeting of the shareholders and determine the matters to be acted upon at such a meeting or (2) loans by the Corporation to directors and may not amend or repeal this sentence of the By-Laws. Any By-Law adopted by the Board may be amended or repealed by the shareholders entitled to vote thereon as herein provided. A By-Law adopted by the shareholders may provide that such By-Law shall not be subject to amendment or repeal by the Board.

**ARTICLE IX**

**Gender References**

**These By-Laws are intended to be gender neutral. Any reference in these By-Laws to one gender shall be deemed to include the other.**

**RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**FIXED INCOME CLEARING CORPORATION**

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**Under Section 807 of the Business Corporation Law**

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**The undersigned, for the purpose of restating the certificate of incorporation of Fixed Income Clearing Corporation, does hereby certify:**

**FIRST: The name of the corporation is Fixed Income Clearing Corporation. The name under which it was originally formed is Government Securities Clearing Corporation.**

**SECOND: The certificate of incorporation of the corporation was filed by the Department of State on November 18, 1986.**

**THIRD: The text of the certificate of incorporation is hereby restated without any further amendment or change to read as herein set forth in full:**

1. **The name of the corporation is Fixed Income Clearing Corporation.**
2. **The purposes for which the corporation is formed are to engage in any lawful act or activity for which corporations may be organized under the Business Corporation Law; provided, however, that the corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without first obtaining the consent of such body.**
3. **The corporation shall have authority to issue 105,000 shares of common stock having a par value of \$0.50 per share.**
4. **Whenever shareholders of the corporation are required or permitted to take any action by vote, the shareholders of the corporation may take such action without a meeting on written consent, setting forth the action so taken, signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.**

5. No holder of any shares of the corporation shall have any preemptive right to purchase or subscribe for any other shares of securities of the corporation which at any time may be sold or offered for sale or subscription by the corporation.
6. To the fullest extent that the New York Business Corporation Law, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors, no director of the corporation shall be liable to the corporation or its shareholders for damages for any breach of duty as a director, except where such liability arises directly or indirectly as a result of a violation of the federal securities laws. No amendment to or repeal of this Article 6 shall apply to or have any effect on the liability of any director of the corporation for or with respect to any acts or omissions of such director occurring after the adoption of this Article 6 and prior to such amendment or repeal.
7. The office of the corporation is to be located in the County of New York, State of New York.
8. The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is 55 Water Street, New York, New York 10041.

FOURTH: The manner in which this restatement of the certificate of incorporation was authorized was by a majority vote of the board of directors of the corporation pursuant to Section 807(a) of the Business Corporation Law. Pursuant to Section 807(a), no vote of the shareholders of the corporation was necessary to authorize this restatement of the certificate of incorporation.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has subscribed this certificate on this day of \_\_\_\_\_, 2018.<sup>[1]</sup>

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Name: Annette Nichols  
Title: Executive Director & Corporate Secretary  
Fixed Income Clearing Corporation  
55 Water Street  
New York, New York 10041

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<sup>[1]</sup> Upon approval of SR-FICC-2018-002, this footnote will automatically be removed from this certificate and the approval date will be inserted as the date that the undersigned has subscribed to this certificate.]

**RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**FIXED INCOME CLEARING CORPORATION**  

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**Under Section 807 of the Business Corporation Law**  

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**Filed by:**

**Fixed Income Clearing Corporation**

**55 Water Street**

**New York, New York 10041**