

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84057; File No. SR-FICC-2018-005)

September 7, 2018

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of Proposed Rule Change to Correct Certain References and Provide Transparency to Existing Processes in the Mortgage-Backed Securities Division Electronic Pool Notification Rules

On July 13, 2018, Fixed Income Clearing Corporation (“FICC”) filed with the U.S. Securities and Exchange Commission (“Commission”) proposed rule change SR-FICC-2018-005 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the Federal Register on July 26, 2018.³ The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission approves the proposed rule change.

I. Description of the Proposed Rule Change

The proposed rule change would amend FICC’s Mortgage-Backed Securities Division (“MSBD”) electronic pool notification (“EPN”) service (“EPN Service”) rules (“EPN Rules”).⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No.83682 (July 20, 2018), 83 FR 35513 (July 26, 2018)(SR-FICC-2018-005)(“Notice”).

⁴ MBSD maintains two sets of rulebooks: the EPN Rules and the MSBD rules (“MBSD Rules”). Notice, 83 FR at 35513. The EPN Rules govern MBSD’s EPN Service, while the MBSD Rules govern MBSD’s clearance and settlement service. Id. The EPN Rules are available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_mbsd_epnrules.pdf. The MBSD Rules are available at

A. Background

FICC states that the EPN Service provides an automated manner for market participants with an obligation to deliver pools of mortgages to transmit mortgage pool information efficiently and reliably to their counterparties in real time.⁵ Market participants that wish to use the EPN Service (i.e., become “EPN Users”) are required to submit an application to MBSB.⁶ The application process and the use of the EPN Service are governed by the EPN Rules.⁷ MBSB’s clearing members (“Clearing Members”) are required to be EPN Users; however, one can be an EPN User and not a Clearing Member.⁸

B. Proposed Amendments to the EPN Rules to Include an EPN User’s Ongoing Reporting Obligations

FICC proposes to amend the EPN Rules by adding a “General Continuance Standards” section. The proposed section would describe two existing MBSB practices with respect to reporting obligations of EPN Users.⁹ First, the proposed section would state that an EPN User shall promptly inform FICC, both orally and in writing, if such EPN User no longer complies with any of the EPN Rules’ requirements for admission to

http://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf.

⁵ Notice, 83 FR at 33513. See also “EPN Overview,” available at <http://www.dtcc.com/clearing-services/ficc-mbsd/epn>.

⁶ Notice, 83 FR at 33513.

⁷ Id.

⁸ Id.

⁹ Notice, 83 FR at 35514.

membership.¹⁰ This notification must occur within two business days from the date on which the EPN User first learns of its non-compliance.¹¹ Second, the proposed section would state that an EPN User shall notify FICC of certain investigations or proceedings. Specifically, an EPN User must notify FICC within two business days after learning (i) that the EPN User is or will become the subject of an investigation or a proceeding, and (ii) that said investigation or proceeding would cause the EPN User to fall out of compliance with any of the requirements for membership set forth in the EPN Rules.¹² However, the EPN User would not be required to provide such a notification to FICC if doing so would cause the EPN User to violate an applicable law, rule, or regulation.¹³

C. Proposed Changes to Amend the EPN Rules to Define Circumstances Under Which FICC May Determine an EPN User's Compliance with EPN Rules

The proposed "General Continuance Standards" section would identify when FICC may review an EPN User's access to the EPN Service. The proposed "General Continuance Standards" section also would identify when FICC may seek written assurances from EPN Users.

First, the proposal would identify five circumstances when FICC would assess if an EPN User should retain access to the EPN Service: (i) if an EPN User experiences a

¹⁰ These membership standards are set forth in EPN Rules, Article III, Rule 1, Sections 2-3, supra note 4.

¹¹ Notice, 83 FR at 35514.

¹² Id.

¹³ Id.

Reportable Event;¹⁴ (ii) if an EPN User fails to maintain the requirements for admission to membership;¹⁵ (iii) if an EPN User violates any EPN Rule or other agreement with FICC; (iv) if an EPN User fails to satisfy any obligation to FICC in a timely manner; or (v) if FICC otherwise deems it necessary or advisable, in order to protect FICC, its other EPN Users, or its creditors or investors, to safeguard securities and funds in the custody or control of FICC, or to promote the prompt and accurate processing, clearance or settlement of securities transactions.¹⁶

Second, the proposed “General Continuance Standards” section would state that FICC may require an EPN User to provide written assurances to FICC.¹⁷ The proposal would authorize FICC to require written assurances from an EPN User if FICC has

¹⁴ As part of the proposal, FICC would include “Reportable Event” as a new defined term in the “Definitions and General Provisions” section of the EPN Rules. “Reportable Event” would be defined as “an event that would effect a change in control of an EPN User or could have a substantial impact on such EPN User’s business and/or financial condition, including, but not limited to: (a) material organizational changes including mergers, acquisitions, changes in corporate form, name changes, changes in the ownership of an EPN User or its affiliates, and material changes in management; and (b) status as a defendant in litigation, which could reasonably impact the EPN User’s financial condition or ability to conduct business.” Id. Distinct from any other notification obligations, an EPN User would be required to submit to FICC written notice of any Reportable Event at least 90 calendar days prior to the effective date of such Reportable Event unless the EPN User demonstrates that (i) the EPN User could not have reasonably done so, and (ii) the EPN User provided written notice and oral notice to FICC as soon as possible. Id.

¹⁵ Such requirements may include, but are not limited to, operational testing and related reporting requirements that FICC may imposed from time to time. Notice, 83 FR at 35514.

¹⁶ Id.

¹⁷ Id.

reason to believe that an EPN User may fail to comply with any of the EPN Rules.¹⁸ Specifically, FICC could require an EPN User to provide written assurances of a credible nature that the EPN User shall not violate any of the EPN Rules.¹⁹ These written assurances could take the specific format of, but would not be limited to such specific formats, notarized statements, affidavits, and/or officers' certificates.²⁰

D. Proposed Clarifying Changes to the EPN Rules

FICC also proposes clarifying corrections to the EPN Rules. Specifically, the proposal would replace references to "FICC" with "the Corporation" in the section entitled "FICC Mortgage-Backed Securities Division ('MBSD') EPN Schedule of Charges."²¹ FICC states that it proposes this change because "FICC" is not a term that is defined in the EPN Rules.²² In addition, FICC proposes to replace the reference to "The Depository Trust Corporation" with "The Depository Trust & Clearing Corporation," which FICC states is an erroneous reference.²³ Additionally, FICC states that to accommodate the introduction of the new "General Continuance Standards" section, FICC proposes to change the numbering of the existing "Confidentiality" provision in

¹⁸ Id.

¹⁹ FICC has discretion to request that the EPN User's written assurance references specific timeframes and details. Id.

²⁰ Id.

²¹ Notice, 83 FR at 35513.

²² Id.

²³ Id.

EPN Rule 1 (Requirements Applicable to EPN Users) of Article III (EPN Users) from “Sec. 8” to “Sec. 9.”²⁴

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act²⁵ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission believes the proposal is consistent with the Act, specifically Section 17A(b)(3)(F) of the Act, Rule 17Ad-22(e)(18) under the Act, and Rule 17Ad-22(e)(23)(i) under the Act, as discussed below.²⁶

A. Consistency with Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act²⁷ requires, *inter alia*, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.

As described above, FICC proposes to make three changes to the EPN Rules. First, FICC proposes to add ongoing reporting obligations on EPN Users. These obligations would require an EPN User to notify FICC within two business days after the EPN User has, or could, fail to comply with EPN Service membership requirements. The Commission believes that codifying an affirmative duty to notify FICC would afford FICC a better opportunity to take timely action, once notified, to preserve the EPN

²⁴ Notice, 83 FR at 35514.

²⁵ 15 U.S.C. 78s(b)(2)(C).

²⁶ 15 U.S.C. 78q-1(b)(3)(F); 17 CFR 240.17Ad-22(20).

²⁷ 15 U.S.C. 78q-1(b)(3)(F).

Service's functionality, as FICC deemed necessary. By providing additional means to preserve the functionality of the EPN Service – a critical component of MBSB's settlement of mortgage-backed securities – the proposal is designed to promote the prompt and accurate clearance and settlement of such securities transactions.

Second, as described above, the proposal would identify circumstances when FICC could reassess an EPN User's access to the EPN Service. By including a "Reportable Event," as defined by the proposal, as one of these circumstances, the proposal would allow FICC to review an EPN User's fitness after learning (i) of an EPN User's significant corporate event or (ii) an EPN User becoming the subject of an investigation or proceeding. The proposal also would allow FICC to require an EPN User to provide written assurances that the EPN User remains in compliance with the EPN Rules. The Commission believes that these proposed changes would codify existing practices that help ensure that FICC can, on its own accord, determine if an EPN User's access to the EPN Service should be reassessed due to possible threats to the EPN Service's functionality. By enabling FICC to better protect the EPN Service, which is essential for MBSB's settlement of mortgage-backed securities, the proposal is designed to promote the prompt and accurate clearance and settlement of such securities transactions.

Third, as described above, FICC proposes clarifying changes to the EPN Rules. The proposed corrections to references in the "EPN Schedule of Charges" and "Requirements Applicable to EPN Users" sections of the EPN Rules would help clarify the EPN Rules for EPN Users. Similarly, FICC's renumbering of the Rules to accommodate the proposed "General Continuance Standards" also would help maintain

the clarity of the EPN Rules for EPN Users. By proposing changes to the EPN Rules to improve clarity, the Commission believes that the proposed changes are designed to help EPN Users better understand and remain compliant with the EPN Rules; thus promoting the prompt and accurate clearance and settlement of securities transactions.

As each of the aforementioned changes is designed to promote the prompt and accurate clearance and settlement of securities transactions, the Commission finds that the proposal is consistent with the requirements of Section 17A(b)(3)(F).

B. Consistency with Rule 17Ad-22(e)(18)

Rule 17Ad-22(e)(18) under the Act requires, inter alia, a covered clearing agency²⁸ to establish, implement, maintain and enforce written policies and procedures reasonably designed to monitor compliance with participation requirements on an ongoing basis.²⁹

As described above, FICC proposes to amend the EPN Rules to (1) include an EPN User's ongoing reporting obligations, and (2) define circumstances under which FICC may determine an EPN User's compliance with the EPN Rules. The Commission believes that these changes would help ensure that FICC is promptly made aware of the

²⁸ A "covered clearing agency" means, among other things, a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q-1 et seq.) that is designated systemically important by the Financial Stability Oversight Counsel ("FSOC") pursuant to the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 et seq.). See 17 CFR 240.17Ad-22(a)(5)-(6). On July 18, 2012, FSOC designated FICC as systemically important. U.S. Department of the Treasury, "FSOC Makes First Designations in Effort to Protect Against Future Financial Crises," available at <https://www.treasury.gov/press-center/press-releases/Pages/tg1645.asp>. Therefore, FICC is a covered clearing agency.

²⁹ 17 CFR 240.17Ad-22(e)(18).

potential need to reassess an EPN User's access to the EPN Service due to the EPN User's possible violation of the EPN Rules. As such, the proposed changes are designed to give FICC the ability to timely monitor an EPN User's compliance with the EPN Rules. Therefore, the Commission finds that proposed changes are consistent with Rule 17Ad-22(e)(18).

C. Consistency with Rule 17Ad-22(e)(23)

Rule 17Ad-22(e)(23) under the Act requires, inter alia, a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for publicly disclosing all relevant rules and material procedures.³⁰

As described above, the proposed rule changes would amend the EPN Rules to reflect existing FICC practices. Specifically, the proposed changes would (1) include an EPN User's ongoing reporting obligations, (2) define circumstances under which FICC may determine an EPN User's compliance with the EPN Rules, and (3) make corrections to the EPN Rules for clarity. As such, the Commission believes these proposed changes to codify and correct FICC's existing practices in the EPN Rules would assist in publicly disclosing all relevant and material procedures regarding the EPN Service.

Therefore, the Commission finds that the proposal is designed to provide for publicly disclosing all relevant rules and material procedures, consistent Rule 17Ad-22(e)(23)(i) under the Act.

³⁰ 17 CFR 240.17Ad-22(e)(23)(i).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act³¹ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR-FICC-2018-005 be, and hereby is, APPROVED.³²

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

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³¹ 15 U.S.C. 78q-1.

³² In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³³ 17 CFR 200.30-3(a)(12).