

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84278; File No. SR-FICC-2018-007)

September 25, 2018

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

On August 3, 2018, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-FICC-2018-007 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 August 15, 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’s (“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 See Securities Exchange Act Release No. 83808 (August 9, 2018), 83 FR 40611 (August 15, 2018)(SR-FICC-2018-007)(“Notice”).

⁴ MSBD maintains two sets of rulebooks: the EPN Rules and the MSBD rules (“MSBD Rules”). Notice, 83 FR at 40611. The EPN Rules govern MSBD’s EPN Service, and the MSBD Clearing Rules (the “MSBD Rules”) govern MSBD’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 MSBD Rules are available at <http://www.dtcc.com/~media/Files/>

A. Background

EPN Service provides an automated manner for market participants with an obligation to deliver pools of mortgages to transmit mortgage pool information 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 MBSD.⁶ The application process and the use of the EPN Service are governed by the EPN Rules.⁷ MBSD’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 Changes to Correct the EPN Rules’ Article I (“Definitions and General Provisions”)

FICC proposes to delete three defined terms from Article I of the EPN Rules: (i) EPN Procedures, (ii) Comparison Only System, and (iii) Par Amount.⁹ FICC proposes to delete the term “EPN Procedures” because FICC does not maintain EPN Procedures.¹⁰ Relatedly, FICC proposes to amend the definitions of “EPN Service” and “EPN User

Downloads/legal/rules/ficc_mbsd_rules.pdf.

⁵ Notice, 83 FR at 40612.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ EPN Rules’ Article V, Rule 11 empowers FICC to adopt EPN Procedures as FICC “deems necessary or desirable.” Supra note 4. FICC states that when FICC instituted the EPN Service and the related EPN Rules, EPN Procedures were not adopted at that time. Notice, 83 FR at 40612.

Profile” in order to delete references to “EPN Procedures” in those definitions.¹¹ FICC also proposes to make a grammatical correction to the “EPN User Profile” definition. Specifically, FICC would replace the word “in” with “by” so the definition reads, “the EPN User Profile would be on a form specified ‘by’ FICC.”¹²

FICC also proposes to delete the term “Comparison Only System” from the definition of “Interested Person” because MBSD does not maintain a “Comparison Only System.”¹³ Similarly, FICC proposes to delete the term “Par Amount” from Article I because the term is not otherwise referred to in the EPN Rules.¹⁴ FICC states that the inclusion of these two terms in the EPN Rules was an error.¹⁵

C. Proposed Changes to Correct the EPN Rules’ Article III (“EPN Users”)

FICC proposes revisions to Article III of the EPN Rules to remove references to “EPN Procedures,” as well as to revise the deadlines to process EPN message (“Messages”).

1. Proposed Changes to EPN Rules, Article III, Rule 1, Section 3 (“Requirements Applicable to EPN Users”)

EPN Rules, Article III, Rule 1, Section 3 lists terms required for application to the EPN Service.¹⁶ This list states, in part, that an applicant shall agree (i) to abide by and be

¹¹ Notice, 83 FR at 40612.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

bound by the EPN Rules and EPN Procedures, (ii) that the EPN Rules and EPN Procedures are incorporated into every contract or Message, (iii) that the EPN User shall pay fines that are imposed in accordance with the EPN Rules and EPN Procedures, and (iv) that the applicant is bound by any amendment to the EPN Rules and EPN Procedures.¹⁷ FICC proposes to delete all references to the EPN Procedures in this list, as FICC does not maintain such procedures.¹⁸

The same Section 3 also states that, in the event of an EPN Service disruption and an extension of the cut-off times for communicating pool allocation information pursuant to the Securities Industry and Financial Markets Association (“SIFMA”) guidelines (“SIFMA Guidelines”), EPN Users “will” be relieved of their obligation to process Messages through the EPN Service until the beginning of the next Business Day after the EPN Service has been recovered.¹⁹ FICC proposes to amend this provision to state that EPN Users “may” be relieved of their obligation to process Messages through the EPN Service until “later in the Business Day or” the beginning of the next Business Day after the EPN Service has been recovered.²⁰ FICC states that this change would accommodate the nature of specific EPN Service disruptions and MBSD’s ability to fix such disruptions

¹⁷ Id.

¹⁸ Id.

¹⁹ Notice, 83 FR at 40612-13.

²⁰ Notice, 83 FR at 40613.

promptly.²¹ FICC states that the specific disruption determines whether the cut-off time would be extended to later in the Business Day or the next Business Day.²²

2. Proposed Changes to EPN Rules, Article III, Rule 1, Section 5 (“EPN Users Bound by EPN Rules, EPN Procedures and Applicable Laws”)

EPN Rules, Article III, Rule 1, Section 5 states, in part, that the use of FICC’s facilities by an EPN User shall constitute such EPN User’s agreement with FICC and with all other EPN Users to be bound by the provisions of, and by any action taken or order issued by FICC pursuant to the EPN Rules and any amendment thereto, and to such EPN Procedures that FICC from time to time may adopt.²³ FICC proposes to amend the title of this section and the paragraph in this section to delete all references to EPN Procedures, as FICC does not maintain such procedures.²⁴

3. Proposed Changes to EPN Rules, Article III, Rule 1, Section 6 (“EPN Rules and EPN Procedures Incorporated in EPN User Messages”)

EPN Rules, Article III, Rule 1, Section 6 states that the EPN Rules and the EPN Procedures adopted from time to time by FICC shall be deemed to be incorporated in each Message that occurs through the EPN Service. This section also states that if the terms contained in any other agreement between EPN Users are inconsistent with the provisions of the EPN Rules or the EPN Procedures, the EPN Rules and the EPN

²¹ Id.

²² Id.

²³ Id.

²⁴ Id.

Procedures shall be controlling.²⁵ FICC proposes to amend the title of this section and the paragraph in this section to delete all references to EPN Procedures, as FICC does not maintain such procedures.²⁶

4. Proposed Changes to EPN Rules’ Article III, Rule 3, Section 1 (“When the Corporation Declines to Act for an EPN User”)

EPN Rules, Article III, Rule 3, Section 1 states that FICC may, at any time, cease to act for an EPN User if the EPN User has (i) failed to perform its obligations to FICC or other EPN Users under the EPN Rules or the EPN Procedures or (ii) materially violated any of the EPN Rules, EPN Procedures, or any agreement with FICC.²⁷ FICC proposes to amend this section to delete all references to the EPN Procedures, as FICC does not maintain such procedures.²⁸

5. Proposed Changes to EPN Rules’ Article III, Rule 4 (“Admission to Premises of Corporation; Powers of Attorney”)

EPN Rules, Article III, Rule 4 states that no person shall be permitted to enter FICC’s premises as the representative of any EPN User unless “he” has first been approved by FICC.²⁹ FICC proposes to delete the reference to “he” and replace it with “such person” because FICC believes that it would be more appropriate to use gender neutral terminology.³⁰

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Id.

D. Proposed Changes to Correct the EPN Rules’ Article V (“Miscellaneous”)

FICC proposes revisions to Article V of the EPN Rules to replace outdated references to “Vice President,” and to remove references to EPN Procedures.

1. Proposed Changes to EPN Rules’ Article V, Rule 1 (“Action by the Corporation”)

EPN Rules, Article V, Rule 1 states that, except where action by FICC’s Board of Directors (“Board”), or any committee of the Board, is specifically required by FICC’s By-Laws or the EPN Rules, FICC may act by its President, any Managing Director, or any Vice President or by such person as may be designated from time to time by the Board.³¹ FICC proposes to amend this sentence to delete the reference to Vice President and replace it with Executive Director because FICC no longer uses the title “Vice President.”³²

2. Proposed Changes to EPN Rules’ Article V, Rule 3 (“Fines and Other Sanctions”)

EPN Rules, Article V, Rule 3 states that FICC may impose a fine on an EPN User for violating EPN Rules or EPN Procedures.³³ FICC proposes to amend this section to delete the reference to EPN Procedures, as FICC does not maintain such procedures.³⁴

3. Proposed Changes to EPN Rules’ Article V, Rule 4 (“Communications”)

EPN Rules, Article V, Rule 4 states that each EPN User maintaining an account

³¹ Id.

³² Id.

³³ Id.

³⁴ Id.

must maintain such data processing and communications equipment as FICC may specify in the EPN Procedures.³⁵ FICC proposes to delete the reference to EPN Procedures, as FICC does not maintain such procedures, and amend this sentence to state that each EPN User maintaining an account shall be required to maintain such data processing and communications equipment as FICC may specify from time-to-time.³⁶ FICC states that this proposed change is consistent with FICC’s existing practice of providing data processing and communications equipment requirements to all approved applicants during the membership onboarding process.³⁷

4. Proposed Changes to EPN Rules’ Article V, Rule 7 (“Hearings”)

EPN Rules, Article V, Rule 4, Section 1 states that if an individual’s written statement contests FICC’s determination that such individual has violated an EPN Rule or EPN Procedure, the statement must specifically admit or deny each violation alleged and detail the reasons why the EPN Rules or EPN Procedures alleged to have been violated are being contested.³⁸ FICC proposes to amend this sentence to delete all references to the EPN Procedures, as FICC does not maintain such procedures.³⁹

5. Proposed Changes to EPN Rules’ Article V, Rule 11 (“EPN Procedures”)

FICC proposes to delete this entire rule because FICC does not maintain EPN

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Id.

Procedures.⁴⁰ FICC would reserve this rule for future use and this rule would be entitled “Reserved for Future Use.”⁴¹

6. Proposed Changes to EPN Rules’ Article V, Rule 12 (“Waivers, Etc.”)

EPN Rules, Article V, Rule 12 states that the Board or any FICC officer (having a rank of Vice President or higher) may extend, waive, or suspend timeframes under the EPN Rules, the EPN Procedures, or any regulations issued by FICC whenever such extension, waiver or suspension is necessary or expedient.⁴² FICC proposes to amend this sentence to delete all references to EPN Procedures, as FICC does not maintain such procedures, and “regulations issued by FICC.”⁴³ FICC also proposes to replace the reference to “Vice President” with “Executive Director” because FICC no longer uses the title “Vice President.”⁴⁴

7. Proposed Changes to EPN Rules’ Article V, Rule 17 (“Forms”)

EPN Rules, Article V, Rule 17 states that any information required to be delivered to FICC by use of any such forms may be delivered by the use of any media, as shall be

⁴⁰ Id. See also supra note 10.

⁴¹ Notice, 83 FR at 40614.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

prescribed in the EPN Procedures or by FICC from time to time.⁴⁵ FICC proposes to delete the reference to EPN Procedures, as FICC does not maintain such procedures.⁴⁶

E. Proposed Changes to Provide Enhances Transparency to the EPN Rules

FICC proposes to provide transparency to various provisions in the EPN Rules, as described below.⁴⁷

1. Proposed Changes to EPN Rules' Article I, Rule 1 ("Definitions")

FICC proposes to amend the term "Message" in Rule 1 to define this term as all electronic messages sent and received by an EPN User through the EPN Service, and to delete the reference to EPN Procedures, as FICC does not maintain such procedures.⁴⁸

2. Proposed Changes to EPN Rules' Article II, Rule 1 ("Accounts")

EPN Rules' Article II, Rule 1, Section 2 states that FICC may specify in the EPN Procedures that certain Messages between EPN Users are not eligible for the EPN Service.⁴⁹ FICC proposes to amend this section to delete the reference to EPN procedures and state that certain Messages may be ineligible if FICC determines that such Messages are not submitted in a manner that is consistent with the communication links, formats, timeframes, and deadlines established by FICC.⁵⁰

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

3. Proposed Changes to EPN Rules’ Article II, Rule 2 (“Reports”)

EPN Rules’ Article II, Rule 2, Section 1 states that the Message detail report (“Message Detail Report”) and the Message summary report (“Message Summary Report”) are available at a time specified in the EPN Procedures.⁵¹ FICC proposes to amend this section to delete the reference to EPN procedures and state that these reports would be available at a time specified in the time schedule posted on FICC’s website.⁵²

EPN Rules’ Article II, Rule 2, Section 2 states that the Message Detail Report shall list the contents of each Message as described in the EPN Procedures.⁵³ FICC proposes to delete the reference to EPN Procedures, as FICC does not maintain such procedures, and amend this section to state that for each EPN eligible security (“Eligible Security”), the Message Detail Report would include, but would not be limited to, the pool number, original face value, current face value, maturity date, pool factor, Committee on Uniform Securities Identification Procedures number (“CUSIP Number”), issue date, principal and interest, and total net money.⁵⁴ In connection with this change, FICC proposes to amend Article I, EPN Rule 1 (Definitions) to include a defined term for “CUSIP Number.”⁵⁵ FICC would define this term as the Committee on Uniform Securities Identification Procedures identifying number for an EPN Eligible Security.⁵⁶

⁵¹ Id.

⁵² Id.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

The proposed change to this section would be consistent with the information that is currently included in the Message Detail Report.⁵⁷

EPN Rules' Article II, Rule 2, Section 3 states that the Message Summary Report shall list the contents of each Message as described in the EPN Procedures.⁵⁸ FICC proposes to delete the reference to EPN Procedures, as FICC does not maintain such procedures, and amend this section to state that for each Eligible Security, the Message Summary Report would include, but would not be limited to, the total original face value, total net money, CUSIP Number, and summary of the number and type of Messages.⁵⁹ The proposed change to this section would be consistent with the information that is currently included in the Message Summary Report.⁶⁰

EPN Rules' Article II, Rule 2, Section 5 states that each EPN Message shall include one or more time stamps, one of which will include a good delivery time stamp as described in the EPN Procedures.⁶¹ FICC proposes to delete the reference to "EPN" in the term "EPN Message" because while "EPN Message" is not a defined term, "Message" is a defined term.⁶² FICC also proposes to delete the reference to EPN Procedures, as FICC does not maintain such procedures.⁶³

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ Id.

FICC also proposes to amend this section to state that the good delivery time stamp would be referred to as “T2” and that the application of this time stamp would determine good delivery among EPN Users pursuant to the SIFMA Guidelines.⁶⁴ The proposed change also would state that the remainder of the time stamps would be for the EPN Service’s operational, processing, and reporting purposes.⁶⁵

4. Proposed Changes to EPN Rules’ Article III, Rule 5 (“Use of EPN Service”)

EPN Rules’ Article III, Rule 5 states that all EPN Users will use the EPN Service for EPN Eligible Securities in a manner set forth in the EPN Procedures and that this shall be accomplished by providing (for each Message that an EPN User sends or receives) the pricing and other descriptive information, in the manner, and by the cut-off times, specified in the EPN Procedures.⁶⁶

FICC proposes to delete the references to EPN Procedures, as FICC does not maintain such procedures, and amend this rule to state that the EPN User will use the EPN Service as set forth in the EPN Rules and that this shall be accomplished by providing (for each Message that an EPN User sends or receives) the pricing and other descriptive information, in the manner, and by the times, specified on FICC’s website.⁶⁷

⁶⁴ Id. FICC notes that the reference to “T2” does not relate to the two business days settlement cycle for broker-deal securities transactions, known as “T+2.” See Notice 83 FR at 40611.

⁶⁵ Notice, 83 FR at 40614.

⁶⁶ Notice, 83 FR at 40615.

⁶⁷ Id.

FICC states that this information is communicated to all approved applicants during the membership onboarding process.⁶⁸

F. Proposed Changes to the EPN Service’s Processing of the Good Delivery T2 Time Stamp for Pool Substitutions

FICC states that, if a pool seller decides to substitute a mortgage pool for which pool information has already been provided, the pool seller must submit a cancel and correct Message by 12:15 p.m. on any Business Day prior to the delivery of the mortgage pool.⁶⁹ Upon receipt of the pool seller’s Message, the EPN Service applies a T2 time stamp to the Message to reflect the time that the EPN Service and the time the pool buyer received the pool seller’s Message.⁷⁰ The T2 time stamp on the pool buyer’s Message establishes whether good delivery has occurred for purposes of the pool seller’s pool substitution.⁷¹ In the event that the T2 time stamp on the pool buyer’s Message reflects a time after 12:15 p.m., FICC is responsible for financing the mortgage pools that are associated with the Message until the next Business Day.⁷²

FICC proposes to establish a single good delivery T2 time stamp that reflects the same processing time on the pool seller’s Message and the pool buyer’s Message, respectively.⁷³ This time stamp would determine whether the 12:15 p.m. cut-off time has

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

⁷³ Id.

been met for purposes of establishing good delivery of the pool buyer's pool substitution.⁷⁴ As a result of this change, in the event that the T2 time stamp reflects a time that does not meet the 12:15 p.m. cut-off time, the financing of the mortgage pools, if any, would be the responsibility of the counterparties to the Message, as determined by such parties in accordance with the SIFMA Guidelines.⁷⁵

FICC states that it is proposing this change because it would be consistent with the SIFMA Guidelines, which FICC states reflects industry best practices.⁷⁶ Further, FICC states that the parties to the Message are best positioned to ensure that the Message meets the good delivery requirements.⁷⁷ FICC states that the proposed change would be consistent with FICC's proposal to refer to the good delivery time stamp as "T2," as discussed above.⁷⁸ Additionally, FICC states that the application of this time stamp would determine good delivery among EPN Users, pursuant to the SIFMA Guidelines.⁷⁹ FICC states that the proposed change would not affect FICC's guarantee and novation of transactions submitted by Clearing Members through MBSD's Clearing System.⁸⁰

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Notice, 83 FR at 40616.

⁷⁷ Notice, 83 FR at 40615.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act⁸¹ 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 and Rule 17Ad-22(e)(23)(i) under the Act, as discussed below.⁸²

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

Section 17A(b)(3)(F) of the Act⁸³ requires, inter alia, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.

First, as described above, FICC proposes to make several clarifying changes to the EPN Rules. Specifically, the proposed changes would correct the EPN Rules by removing inaccurate or inapplicable terms from the Rules. The proposed changes also are designed to provide transparency to the EPN Rules by more accurately describing the EPN Service's current practices. By improving the EPN Rules in this way, the Commission believes the proposed changes would help clarify the EPN Users' rights and obligations under those practices. By better understand their rights and obligations regarding the EPN Service, EPN Users are more likely to act in accordance with the EPN

⁸¹ 15 U.S.C. 78s(b)(2)(C).

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

⁸³ 15 U.S.C. 78q-1(b)(3)(F).

Rules, which the Commission believes would promote the prompt and accurate clearance and settlement of securities transactions.

Second, as described above, FICC proposes to establish a single good delivery T2 time stamp. This proposed change is designed to be consistent with the SIFMA Guidelines, which reflect industry best practices. Additionally, by making the counterparties responsible for the financing the mortgage pools if the 12:15 p.m. deadline is not met, the proposal would encourage EPN Users to adhere to the deadline for substitutions. By ensuring that the EPN Services comport with industry best practices and encouraging EPN Users to abide by processing deadlines, the Commission believes that the proposed changes would help the processing of transactions through the EPN Service, thus promoting the prompt and accurate clearance and settlement of such 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 and is consistent with the requirements of Section 17A(b)(3)(F).

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

Rule 17Ad-22(e)(23)(i) under the Act requires, inter alia, a covered clearing agency⁸⁴ to establish, implement, maintain and enforce written policies and procedures

⁸⁴ 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

reasonably designed to provide for publicly disclosing all relevant rules and material procedures.⁸⁵

As described above, the proposed rule changes would (i) correct the EPN Rules by removing inappropriate terminology, (ii) provide transparency to the EPN Rules by ensuring the EPN Rules match the EPN Service's current practices, and (iii) amend the EPN Service's processing of T2 time stamps for pool substitutions. Each of these proposed changes would assist FICC in publicly disclosing all relevant and material procedures regarding the EPN Service to EPN Users. Therefore, the Commission finds that the proposal is consistent Rule 17Ad-22(e)(23)(i) under the Act.

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 Act⁸⁶ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that

<https://www.treasury.gov/press-center/press-releases/Pages/tg1645.asp>.
Therefore, FICC is a covered clearing agency.

⁸⁵ 17 CFR 240.17Ad-22(e)(23)(i).

⁸⁶ 15 U.S.C. 78q-1.

proposed rule change SR-FICC-2018-007 be, and hereby is, APPROVED.⁸⁷

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁸

Eduardo A. Aleman
Assistant Secretary

⁸⁷ 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).

⁸⁸ 17 CFR 200.30-3(a)(12).