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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2019 - * 006
Amendment No. (req. for Amendments *)

Filing by Fixed Income Clearing Corporation

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☑ 19b-4(f)(4)
☑ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

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 *).

Include a New Foreign Legal Opinion Fee Applicable to Non-U.S. Membership Applicants, and Delete a Requirement for Direct Non-U.S. Members Relating to Annual Opinion Updates

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 * Nikki Last Name * Poulos
Title * Managing Director and Deputy General Counsel
E-mail * npoulos@dtcc.com
Telephone * (212) 855-7633 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.

Date 12/16/2019

By Nikki Poulos

(Name *)

(Title *)

Managing Director and Deputy General Counsel

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.

npoulos@dtcc.com

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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 *

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, 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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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 of Fixed Income Clearing Corporation ("FICC") is attached hereto as Exhibit 5 and consists of a proposal to amend the FICC Government Securities Division ("GSD") Rulebook ("GSD Rules") and the FICC Mortgage-Backed Securities Division ("MBSD") Clearing Rules ("MBSD Rules")[1] to: (i) include a new foreign legal opinion fee in the GSD Fee Structure, and the MBSD Schedule of Charges Broker Account Group and MBSD Schedule of Charges Dealer Account Group (with the GSD Fee Structure, collectively referred to as the "FICC Fee Schedules") applicable to non-U.S. Netting Member and non-U.S. Clearing Member membership applicants,[2] and (ii) delete the requirement for direct non-U.S. members to submit, on an annual basis, an updated opinion on home country law (and if applicable, other non-domestic law), or a letter from their outside counsel indicating that there have been no material changes in home country law (or other applicable non-domestic law) since the date of issuance of the most recent opinion submitted to FICC (hereinafter referred to as the "bring-down opinion").[3]

(b) Not applicable

(c) Not applicable

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Businesses, Technology & Operations Committee of FICC's Board of Directors on June 11, 2019.

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

(a) Purpose

The purpose of the proposed rule change is to amend the GSD Rules and the MBSD Rules to: (i) include a new foreign legal opinion fee in the FICC Fee Schedules applicable to

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1 Capitalized terms not defined herein are defined in the GSD Rules and MBSD Rules, available at http://www.dtcc.com/legal/rules-and-procedures.

2 The proposed fee would also be applicable to applicants that are U.S. branches and agencies of non-U.S. banks because such applicants are also required to submit a foreign legal opinion as part of their application.

3 The annual bring-down opinion requirement does not apply to non-U.S. members participating through U.S. branches or agencies.

non-U.S. membership applicants,[4] and (ii) delete the requirement for direct non-U.S. members to submit a bring-down opinion on an annual basis.

Background

Under FICC's current process applicable to both GSD and MBSD, a non-U.S. foreign applicant, including an applicant that is a U.S. branch or agency of a non-U.S. bank, provides an extensive legal opinion addressing complex issues such as netting, bankruptcy, and choice of law issues under the law of the applicant's home jurisdiction (the "foreign insolvency and netting opinion").[5] The foreign insolvency and netting opinion is provided by outside counsel hired by the applicant. The opinion is then reviewed (and negotiated with the applicant's counsel, as needed) by FICC and FICC's outside U.S. counsel. As such, in this current process, both the applicant and FICC are incurring duplicative legal costs.

In addition, GSD and MBSD currently require direct non-U.S. members (i.e., those not participating through a U.S. branch or agency) to provide bring-down opinions annually. Again, FICC hires its own outside U.S. counsel to review the bring-down opinions.

Proposed Process

In order to address the legal costs for the review of the non-U.S. legal opinions for non-U.S. membership applicants, FICC proposes to modify the current process for obtaining non-U.S. legal opinions and implement a new foreign legal opinion fee ("Foreign Legal Opinion Fee"). Such fee would be non-refundable regardless of the outcome of the application process.

Proposed Rule Changes

Pursuant to the proposed rule changes, FICC would select outside counsel to provide a foreign insolvency and netting opinion satisfactory to FICC regarding the laws of the applicable non-U.S. jurisdiction. This would alleviate the burden from membership applicants of having to hire their own outside counsel to prepare the opinion. Also pursuant to this proposal, the FICC Fee Schedules would be amended to provide that the initial non-U.S. membership applicant (including one participating through a U.S. branch or agency) from a given jurisdiction would be advised of a "Maximum Estimated Charge" based on the estimated amount provided to FICC by FICC's outside counsel with respect to obtaining the foreign insolvency and netting opinion for that jurisdiction. The estimate would be prepared on an as-needed basis and would not be based on a pre-existing schedule. FICC would advise the non-U.S. applicant of the Maximum Estimated Charge in writing.

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4 Supra note 2.

5 Section 5 of GSD Rule 2A and Section 3 of MBSD Rule 2A reference opinions as one of the possible required documents in the application submission. See GSD Rule 2A and MBSD Rule 2A, supra note 1. The application requirements sheet provided to potential GSD and MBSD members outlines the types of opinions required.

The amount of the Foreign Legal Opinion Fee charged to the applicant would be the lesser of a Maximum Estimated Charge and the actual costs charged to FICC by outside counsel providing a legal opinion in form and substance satisfactory to FICC regarding the laws of the non-U.S. jurisdiction. If within five (5) business days after FICC advises the non-U.S. membership applicant of the Maximum Estimated Charge, as described above, the non-U.S. applicant notifies FICC in writing that it will terminate its application, the non-U.S. applicant will not be charged the Foreign Legal Opinion Fee. If the application is terminated, the Maximum Estimated Charge would no longer apply and FICC would obtain a new Maximum Estimated Charge from FICC's outside counsel if it receives a subsequent application from that jurisdiction. If the initial non-U.S. membership applicant does not terminate its application within five (5) business days of FICC advising it of the Maximum Estimated Charge, then the non-U.S. applicant would be billed for the Foreign Legal Opinion Fee in the amount that would be determined as described above. Promptly after FICC's outside counsel has provided to FICC a final invoice stating the actual amount to be charged to FICC for the foreign legal opinion, FICC would send an invoice to the applicant. Payment by the non-U.S. membership applicant would be due within ten (10) business days of the non-U.S. applicant's receipt of an invoice, including payment instructions, from FICC.

The FICC Fee Schedules would not expressly include an absolute maximum amount for the Foreign Legal Opinion Fee because, based on FICC's experience in reviewing foreign legal opinions, the level of review required for FICC to gain comfort that the law of the applicant's jurisdiction does not provide material impediments to enforcement of the GSD Rules and MBSD Rules, as applicable, can vary significantly by jurisdiction, resulting in significant variance in counsel costs to FICC. The FICC Fee Schedules would not include an absolute minimum amount for the Foreign Legal Opinion Fee because FICC would not charge an applicant a Foreign Legal Opinion Fee that is in an amount that is higher than the actual amount billed by FICC's outside counsel to provide the applicable foreign insolvency and netting opinion.

Each subsequent non-U.S. membership applicant ("Subsequent Non-U.S. Applicant") from the same jurisdiction would be charged a Foreign Legal Opinion Fee in an amount equal to the Foreign Legal Opinion Fee charged to the first non-U.S. membership applicant from the same jurisdiction that was charged a Foreign Legal Opinion Fee. FICC would notify each Subsequent Non-U.S. Applicant in writing of the amount of the Foreign Legal Opinion Fee that was determined as described above. If within five (5) business days after FICC advises the Subsequent Non-U.S. Participant Applicant of the applicable Foreign Legal Opinion Fee, the applicant notifies FICC in writing that it will terminate its membership application, the applicant would not be charged a Foreign Legal Opinion Fee. If the Subsequent Non-U.S. Applicant does not terminate its application within five (5) business days of FICC advising it of the amount of the Foreign Legal Opinion Fee, then the applicant would be billed accordingly. Payment by the Non-U.S. Participant Applicant of the full amount of the Foreign Legal Opinion Fee would be due within ten (10) business days of the applicant's receipt of an invoice, including payment instructions, from FICC.

Pursuant to the proposed rule change, FICC would delete from GSD Rule 3, Section 2 and MBSD Rule 3, Section 2 the requirement for direct foreign members to submit the annual bring-down opinions. FICC will instead periodically monitor to identify any significant changes

in relevant non-U.S. jurisdictions that may be of interest to FICC. FICC would not charge members for this monitoring service.

(b) Statutory Basis

Section 17A(b)(3)(D) of the Securities Exchange Act of 1934 ("Act") requires that the GSD Rules and MBSD Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[6] FICC believes the proposed Foreign Legal Opinion Fee would be equitably allocated because in accordance with the amendment to the FICC Fee Schedules as described above, a Foreign Legal Opinion Fee in the same amount would be charged to all subsequent applicants domiciled in the jurisdiction for which an applicable foreign legal opinion was obtained. In addition, FICC believes that the proposed Foreign Legal Opinion Fee would be reasonable because (i) it would be capped in the amount of the Maximum Estimated Charge, as described above, (ii) the amount of a Foreign Legal Opinion Fee charged to an applicant would not be greater than the costs FICC may incur in connection with obtaining the applicable foreign legal opinion, as described above, and (iii) it would eliminate the cost to FICC associated with the review of foreign legal opinions. Therefore, FICC believes that the proposed rule change would provide for the equitable allocation of reasonable fees among its participants, and is consistent with Section 17A(b)(3)(D).[7]

Section 17A(b)(3)(F) of the Act, requires, inter alia, that the GSD Rules and MBSD Rules are not designed to permit unfair discrimination in the admission of participants in the use of the clearing agency.[8] FICC believes the proposed rule changes are consistent with this provision because the proposal for FICC to obtain a single foreign netting and insolvency opinion from FICC outside counsel for all new non-U.S. membership applicants domiciled within a jurisdiction, rather than requiring each applicant to obtain an opinion from its own outside counsel in its jurisdiction, would provide for enhanced consistency in the review performed by FICC by eliminating the need for it to review multiple legal opinions submitted by each applicant individually. Similarly, FICC believes that removing the annual bring-down opinion requirement would provide for enhanced consistency in FICC's review of material changes in applicable non-U.S. law and would eliminate the situation whereby multiple direct foreign members from the same jurisdiction are each submitting separate bring-down opinions/letters. Therefore, FICC believes that the proposed rule change would not permit unfair discrimination in the admission of members in the use of FICC, and is consistent with the provisions of Section 17A(b)(3)(F).[9]

Rule 17Ad-22(e)(18) under the Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-

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6 15 U.S.C. 78q-1(b)(3)(D).

7 Id.

8 15 U.S.C. 78q-1(b)(3)(F).

9 Id.

based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.[10] FICC believes that the proposed rule changes regarding the Foreign Legal Opinion Fee and elimination of the annual bring-down requirement have been designed to meet the applicable provisions of Rule 17Ad-22(e)(18). This is because the netting and insolvency opinion requirement for non-U.S. applicants, which is a risk-based requirement in that it allows FICC to learn and address any potential legal risk arising from a non-U.S. jurisdiction's laws, would remain under the proposed rule changes. The proposed rule change would not adversely affect fair and open access because the requirement for such legal opinion exists today in that non-U.S. applicants must procure and pay for their own opinion currently. Moreover, the Foreign Legal Opinion Fee would constitute a publicly disclosed requirement for applying as a non-U.S. applicant to GSD and MBSD. Finally, while the proposal would eliminate the bring-down opinion requirement, FICC would continue to periodically monitor in order to identify any significant changes in relevant non-U.S. jurisdictions that may be of interest to FICC.

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

FICC believes that the proposed changes to the FICC Fee Schedules to impose the Foreign Legal Opinion Fee could impose a burden on competition because it would implement a new fee payable by a non-U.S. applicant in connection with a membership application to FICC, which currently does not exist in the FICC Fee Schedules. FICC does not believe that any burden on competition imposed by the changes to the FICC Fee Schedules would be significant because the Foreign Legal Opinion Fee is unlikely to cause a material impact to a non-U.S. membership applicant's overall cost of applying for FICC membership due to the fact that, absent the proposal, these applicants would have incurred the cost of obtaining the foreign legal opinion themselves. FICC believes that any burden on competition that is created by the proposed changes to the FICC Fee Schedules would be necessary in furtherance of the purposes of the Act[11] in order to cover costs to FICC associated with obtaining the foreign legal opinion that is necessary for FICC to determine whether it would face legal risks in connection with admitting a foreign membership applicant. FICC also believes that any burden that is created by the Foreign Legal Opinion Fee would be appropriate in furtherance of the Act[12] because it would be capped at the Maximum Estimated Charge and would not be greater than the costs FICC may incur in connection with obtaining the applicable foreign legal opinion.

FICC believes that the elimination of the annual bring-down requirement could promote competition because it would eliminate the cost of obtaining the bring-down opinion/letter currently incurred by direct foreign members, potentially lowering their operating costs.

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10 17 CFR 240.17Ad-22(e)(18).

11 15 U.S.C. 78q-1(b)(3)(I).

12 Id.

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

Written comments relating to the proposed rule changes have not been solicited or received. FICC will notify the Securities and Exchange Commission ("Commission") of any written comments received by FICC.

6. Extension of Time Period for Commission Action

Not applicable.

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

(a) The proposed rule change is to take effect immediately upon filing pursuant to Section 19(b)(3)(A) of the Act.[13]

(b) The proposed rule change would not (i) adversely affect the safeguarding of securities or funds in the custody or control of FICC or (ii) significantly affect the rights or obligations of users of FICC's services,[14] because the proposed changes (A) provide for FICC to obtain foreign legal opinions from FICC outside counsel and charge the Foreign Legal Opinion Fee and (B) remove the annual bring-down opinion requirement would merely enhance the efficiency of the process for obtaining foreign legal opinions without altering the substance of FICC's review of legal issues presented by foreign membership applications and current members. Concerning the Foreign Legal Opinion Fee, the proposed rule changes establishes a due, fee or other charge.[15]

(c) Not applicable.

(d) Not applicable.

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

The proposed rule change is based on part of the following rule filing by The Depository Trust Company: Securities Exchange Act Release No. 34-83544 (June 28, 2018), 83 FR 31223 (July 3, 2018) (SR-DTC-2018-002) ("DTC Rule Filing"). At a high level, the DTC Rule Filing proposed (i) application fees, (ii) a time limit for completion of an application by an applicant, and (iii) foreign legal opinion fees. The FICC proposed rule change is only based on the part of the DTC Rule Filing concerning foreign legal opinion fees and does not propose application fees or time limits for completion of membership applications. Concerning foreign legal opinion

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13 15 U.S.C. 78s(b)(3)(A).

14 17 CFR 240.19b-4(f)(4).

15 17 CFR 240.19b-4(f)(2).

fees, the FICC proposed rule changes track the DTC Rule Filing closely, and FICC does not believe that there is a difference between the conduct required to comply with the proposed rule change and that required to comply with the DTC Rule Filing.

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

Not applicable.

10. Advance Notice 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 5 – Proposed changes to the GSD Rules and MBSD Rules.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-FICC-2019-006)

[DATE]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Include a New Foreign Legal Opinion Fee Applicable to Non-U.S. Membership Applicants, and Delete a Requirement for Direct Non-U.S. Members Relating to Annual Opinion Updates

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December __, 2019, 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. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rules 19b-4(f)(2) and (f)(4) thereunder.[4] 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 consists of a proposal to amend the FICC Government Securities Division ("GSD") Rulebook ("GSD Rules") and the FICC Mortgage-Backed

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A).

4 17 CFR 240.19b-4(f)(2) and (f)(4).

Securities Division ("MBSD") Clearing Rules ("MBSD Rules")[5] to: (i) include a new foreign legal opinion fee in the GSD Fee Structure, and the MBSD Schedule of Charges Broker Account Group and MBSD Schedule of Charges Dealer Account Group (with the GSD Fee Structure, collectively referred to as the "FICC Fee Schedules") applicable to non-U.S. Netting Member and non-U.S. Clearing Member membership applicants,[6] and (ii) delete the requirement for direct non-U.S. members to submit, on an annual basis, an updated opinion on home country law (and if applicable, other non-domestic law), or a letter from their outside counsel indicating that there have been no material changes in home country law (or other applicable non-domestic law) since the date of issuance of the most recent opinion submitted to FICC (hereinafter referred to as the "bring-down opinion").[7]

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

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5 Capitalized terms not defined herein are defined in the GSD Rules and MBSD Rules, available at http://www.dtcc.com/legal/rules-and-procedures.

6 The proposed fee would also be applicable to applicants that are U.S. branches and agencies of non-U.S. banks because such applicants are also required to submit a foreign legal opinion as part of their application.

7 The annual bring-down opinion requirement does not apply to non-U.S. members participating through U.S. branches or agencies.

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

The purpose of the proposed rule change is to amend the GSD Rules and the MBSD Rules to: (i) include a new foreign legal opinion fee in the FICC Fee Schedules applicable to non-U.S. membership applicants,[8] and (ii) delete the requirement for direct non-U.S. members to submit a bring-down opinion on an annual basis.

Background

Under FICC's current process applicable to both GSD and MBSD, a non-U.S. foreign applicant, including an applicant that is a U.S. branch or agency of a non-U.S. bank, provides an extensive legal opinion addressing complex issues such as netting, bankruptcy, and choice of law issues under the law of the applicant's home jurisdiction (the "foreign insolvency and netting opinion").[9] The foreign insolvency and netting opinion is provided by outside counsel hired by the applicant. The opinion is then reviewed (and negotiated with the applicant's counsel, as needed) by FICC and FICC's outside U.S. counsel. As such, in this current process, both the applicant and FICC are incurring duplicative legal costs.

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8 Supra note 6.

9 Section 5 of GSD Rule 2A and Section 3 of MBSD Rule 2A reference opinions as one of the possible required documents in the application submission. See GSD Rule 2A and MBSD Rule 2A, supra note 5. The application requirements sheet provided to potential GSD and MBSD members outlines the types of opinions required.

In addition, GSD and MBSD currently require direct non-U.S. members (i.e., those not participating through a U.S. branch or agency) to provide bring-down opinions annually. Again, FICC hires its own outside U.S. counsel to review the bring-down opinions.

Proposed Process

In order to address the legal costs for the review of the non-U.S. legal opinions for non-U.S. membership applicants, FICC proposes to modify the current process for obtaining non-U.S. legal opinions and implement a new foreign legal opinion fee ("Foreign Legal Opinion Fee"). Such fee would be non-refundable regardless of the outcome of the application process.

Proposed Rule Changes

Pursuant to the proposed rule changes, FICC would select outside counsel to provide a foreign insolvency and netting opinion satisfactory to FICC regarding the laws of the applicable non-U.S. jurisdiction. This would alleviate the burden from membership applicants of having to hire their own outside counsel to prepare the opinion. Also pursuant to this proposal, the FICC Fee Schedules would be amended to provide that the initial non-U.S. membership applicant (including one participating through a U.S. branch or agency) from a given jurisdiction would be advised of a "Maximum Estimated Charge" based on the estimated amount provided to FICC by FICC's outside counsel with respect to obtaining the foreign insolvency and netting opinion for that jurisdiction. The estimate would be prepared on an as-needed basis and would not be based on a pre-existing schedule. FICC would advise the non-U.S. applicant of the Maximum Estimated Charge in writing.

The amount of the Foreign Legal Opinion Fee charged to the applicant would be the lesser of a Maximum Estimated Charge and the actual costs charged to FICC by outside counsel providing a legal opinion in form and substance satisfactory to FICC regarding the laws of the non-U.S. jurisdiction. If within five (5) business days after FICC advises the non-U.S. membership applicant of the Maximum Estimated Charge, as described above, the non-U.S. applicant notifies FICC in writing that it will terminate its application, the non-U.S. applicant will not be charged the Foreign Legal Opinion Fee. If the application is terminated, the Maximum Estimated Charge would no longer apply and FICC would obtain a new Maximum Estimated Charge from FICC's outside counsel if it receives a subsequent application from that jurisdiction. If the initial non-U.S. membership applicant does not terminate its application within five (5) business days of FICC advising it of the Maximum Estimated Charge, then the non-U.S. applicant would be billed for the Foreign Legal Opinion Fee in the amount that would be determined as described above. Promptly after FICC's outside counsel has provided to FICC a final invoice stating the actual amount to be charged to FICC for the foreign legal opinion, FICC would send an invoice to the applicant. Payment by the non-U.S. membership applicant would be due within ten (10) business days of the non-U.S. applicant's receipt of an invoice, including payment instructions, from FICC.

The FICC Fee Schedules would not expressly include an absolute maximum amount for the Foreign Legal Opinion Fee because, based on FICC's experience in reviewing foreign legal opinions, the level of review required for FICC to gain comfort that the law of the applicant's jurisdiction does not provide material impediments to enforcement of the GSD Rules and MBSD Rules, as applicable, can vary significantly by

jurisdiction, resulting in significant variance in counsel costs to FICC. The FICC Fee Schedules would not include an absolute minimum amount for the Foreign Legal Opinion Fee because FICC would not charge an applicant a Foreign Legal Opinion Fee that is in an amount that is higher than the actual amount billed by FICC's outside counsel to provide the applicable foreign insolvency and netting opinion.

Each subsequent non-U.S. membership applicant ("Subsequent Non-U.S. Applicant") from the same jurisdiction would be charged a Foreign Legal Opinion Fee in an amount equal to the Foreign Legal Opinion Fee charged to the first non-U.S. membership applicant from the same jurisdiction that was charged a Foreign Legal Opinion Fee. FICC would notify each Subsequent Non-U.S. Applicant in writing of the amount of the Foreign Legal Opinion Fee that was determined as described above. If within five (5) business days after FICC advises the Subsequent Non-U.S. Participant Applicant of the applicable Foreign Legal Opinion Fee, the applicant notifies FICC in writing that it will terminate its membership application, the applicant would not be charged a Foreign Legal Opinion Fee. If the Subsequent Non-U.S. Applicant does not terminate its application within five (5) business days of FICC advising it of the amount of the Foreign Legal Opinion Fee, then the applicant would be billed accordingly. Payment by the Non-U.S. Participant Applicant of the full amount of the Foreign Legal Opinion Fee would be due within ten (10) business days of the applicant's receipt of an invoice, including payment instructions, from FICC.

Pursuant to the proposed rule change, FICC would delete from GSD Rule 3, Section 2 and MBSD Rule 3, Section 2 the requirement for direct foreign members to submit the annual bring-down opinions. FICC will instead periodically monitor to

identify any significant changes in relevant non-U.S. jurisdictions that may be of interest to FICC. FICC would not charge members for this monitoring service.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act requires that the GSD Rules and MBSD Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[10] FICC believes the proposed Foreign Legal Opinion Fee would be equitably allocated because in accordance with the amendment to the FICC Fee Schedules as described above, a Foreign Legal Opinion Fee in the same amount would be charged to all subsequent applicants domiciled in the jurisdiction for which an applicable foreign legal opinion was obtained. In addition, FICC believes that the proposed Foreign Legal Opinion Fee would be reasonable because (i) it would be capped in the amount of the Maximum Estimated Charge, as described above, (ii) the amount of a Foreign Legal Opinion Fee charged to an applicant would not be greater than the costs FICC may incur in connection with obtaining the applicable foreign legal opinion, as described above, and (iii) it would eliminate the cost to FICC associated with the review of foreign legal opinions. Therefore, FICC believes that the proposed rule change would provide for the equitable allocation of reasonable fees among its participants, and is consistent with Section 17A(b)(3)(D).[11]

Section 17A(b)(3)(F) of the Act, requires, inter alia, that the GSD Rules and MBSD Rules are not designed to permit unfair discrimination in the admission of

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10 15 U.S.C. 78q-1(b)(3)(D).

11 Id.

participants in the use of the clearing agency.[12] FICC believes the proposed rule changes are consistent with this provision because the proposal for FICC to obtain a single foreign netting and insolvency opinion from FICC outside counsel for all new non-U.S. membership applicants domiciled within a jurisdiction, rather than requiring each applicant to obtain an opinion from its own outside counsel in its jurisdiction, would provide for enhanced consistency in the review performed by FICC by eliminating the need for it to review multiple legal opinions submitted by each applicant individually. Similarly, FICC believes that removing the annual bring-down opinion requirement would provide for enhanced consistency in FICC's review of material changes in applicable non-U.S. law and would eliminate the situation whereby multiple direct foreign members from the same jurisdiction are each submitting separate bring-down opinions/letters. Therefore, FICC believes that the proposed rule change would not permit unfair discrimination in the admission of members in the use of FICC, and is consistent with the provisions of Section 17A(b)(3)(F).[13]

Rule 17Ad-22(e)(18) under the Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency,

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12 15 U.S.C. 78q-1(b)(3)(F).

13 Id.

and monitor compliance with such participation requirements on an ongoing basis.[14] FICC believes that the proposed rule changes regarding the Foreign Legal Opinion Fee and elimination of the annual bring-down requirement have been designed to meet the applicable provisions of Rule 17Ad-22(e)(18). This is because the netting and insolvency opinion requirement for non-U.S. applicants, which is a risk-based requirement in that it allows FICC to learn and address any potential legal risk arising from a non-U.S. jurisdiction's laws, would remain under the proposed rule changes. The proposed rule change would not adversely affect fair and open access because the requirement for such legal opinion exists today in that non-U.S. applicants must procure and pay for their own opinion currently. Moreover, the Foreign Legal Opinion Fee would constitute a publicly disclosed requirement for applying as a non-U.S. applicant to GSD and MBSD. Finally, while the proposal would eliminate the bring-down opinion requirement, FICC would continue to periodically monitor in order to identify any significant changes in relevant non-U.S. jurisdictions that may be of interest to FICC.

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

FICC believes that the proposed changes to the FICC Fee Schedules to impose the Foreign Legal Opinion Fee could impose a burden on competition because it would implement a new fee payable by a non-U.S. applicant in connection with a membership application to FICC, which currently does not exist in the FICC Fee Schedules. FICC does not believe that any burden on competition imposed by the changes to the FICC Fee Schedules would be significant because the Foreign Legal Opinion Fee is unlikely to cause a material impact to a non-U.S. membership applicant's overall cost of applying for

14 17 CFR 240.17Ad-22(e)(18).

FICC membership due to the fact that, absent the proposal, these applicants would have incurred the cost of obtaining the foreign legal opinion themselves. FICC believes that any burden on competition that is created by the proposed changes to the FICC Fee Schedules would be necessary in furtherance of the purposes of the Act[15] in order to cover costs to FICC associated with obtaining the foreign legal opinion that is necessary for FICC to determine whether it would face legal risks in connection with admitting a foreign membership applicant. FICC also believes that any burden that is created by the Foreign Legal Opinion Fee would be appropriate in furtherance of the Act[16] because it would be capped at the Maximum Estimated Charge and would not be greater than the costs FICC may incur in connection with obtaining the applicable foreign legal opinion.

FICC believes that the elimination of the annual bring-down requirement could promote competition because it would eliminate the cost of obtaining the bring-down opinion/letter currently incurred by direct foreign members, potentially lowering their operating costs.

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

Written comments relating to the proposed rule changes have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

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15 15 U.S.C. 78q-1(b)(3)(I).

16 Id.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and paragraph (f) of Rule 19b-4 thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. Please include File Number SR-FICC-2019-006 on the subject line.

Paper Comments:

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

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17 15 U.S.C. 78s(b)(3)(A).

18 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-FICC-2019-006. 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-2019-006 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.[19]

Secretary

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19 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Bold, underlined text indicates proposed added language

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

FIXED INCOME CLEARING CORPORATION

GOVERNMENT SECURITIES DIVISION RULEBOOK

RULE 3 – ONGOING MEMBERSHIP REQUIREMENTS

* * *

Section 2 - Reports by Netting Members

* * *

Moreover, Foreign Netting Members must submit to the Corporation, concurrently with their submission to the relevant regulator or similar authority, copies of any regulatory notifications required to be made when a member does not comply with the financial reporting and responsibility standards set by its home country regulator. Foreign Netting Members must also notify the Corporation in writing within 2 business days of becoming subject to a disciplinary action by their home country regulator. ~~**Foreign Netting Members must submit, on an annual basis, within the timeframe required by guidelines issued by the Corporation, an updated opinion of outside counsel on home country law and, if applicable, other relevant non-domestic law, or a letter from their outside counsel indicating that there have been no material changes in home country law (and/or other applicable non-domestic law) since the date of issuance of the most recent opinion submitted to the Corporation.**~~

* * *

FEE STRUCTURE*
(effective ~~**December 2, 2019**~~ **December 16, 2019**)

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XIV. NON-U.S. MEMBERSHIP APPLICANT FOREIGN LEGAL OPINION FEE

(a) **For the initial applicant ("Initial Applicant") organized in a given non-U.S. jurisdiction ("Jurisdiction of Organization") to apply for membership, if the applicant does not otherwise terminate its application in accordance with (c) below: The lesser of (i) a maximum estimated charge ("Maximum Estimated Charge") and (ii) the actual costs charged to the Corporation by outside counsel providing a legal opinion in form and substance satisfactory to the Corporation regarding the laws of the Jurisdiction of Organization.**

(b) **For each subsequent applicant organized in the applicable Jurisdiction of Organization ("Subsequent Non-U.S. Applicant"), if the Subsequent Non-U.S. Applicant does not otherwise terminate its application in accordance with (c) below: an amount equal to the fee charged to the Initial Applicant from the Jurisdiction of Organization, as determined in accordance with (a) above.**

(c) **The Non-U.S. Membership Applicant Foreign Legal Opinion Fee is non-refundable regardless of the outcome of the application process (i.e., approval, disapproval or expiration); however, an applicant will not be charged a Non-U.S. Membership Applicant Foreign Legal Opinion Fee if it terminates its application in writing within five (5) Business Days of being notified in writing by the Corporation of the Maximum Estimated Charge (for an Initial Applicant) or fee amount (for a Subsequent Non-U.S. Applicant), as applicable.**

(d) **If the applicant does not terminate its application in accordance with (c) above, then the applicant will be billed the applicable fee amount as determined by the Corporation in accordance with the above, with full payment due within ten (10) Business Days of receipt of an invoice from the Corporation, including payment instructions.**

* * *

* Fees stated to apply to CCIT Members shall be applied at the Joint Account level for CCIT Members participating through a Joint Account.

FIXED INCOME CLEARING CORPORATION

MORTGAGE-BACKED SECURITIES DIVISION

CLEARING RULES

RULE 3 – ONGOING MEMBERSHIP REQUIREMENTS

* * *

Section 2 - Reports by Clearing Members

* * *

Moreover, Foreign Clearing Members who are regulated must submit to the Corporation, concurrently with their submission to the relevant regulator or similar authority, copies of any regulatory notifications required to be made when a Member does not comply with the financial reporting and responsibility standards set by its home country regulator. Foreign Clearing Members who are regulated must also notify the Corporation in writing within 2 business days of becoming subject to a disciplinary action by their home country regulator. ~~**All Foreign Clearing Members must submit, on an annual basis, within the timeframe required by guidelines issued by the Corporation, an updated opinion of outside counsel on home country law and, if applicable, other relevant non-domestic law, or a letter from their outside counsel indicating that there have been no material changes in home country law (and/or other applicable non-domestic law) since the date of issuance of the most recent opinion submitted to the Corporation.**~~

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FICC MORTGAGE-BACKED SECURITIES DIVISION
SCHEDULE OF CHARGES BROKER ACCOUNT GROUP

I. FEES

*** * ***

Non-U.S. Membership Applicant Foreign Legal Opinion Fee

(a) **For the initial applicant ("Initial Applicant") organized in a given non-U.S. jurisdiction ("Jurisdiction of Organization") to apply for membership, if the applicant does not otherwise terminate its application in accordance with (c) below: The lesser of (i) a maximum estimated charge ("Maximum Estimated Charge") and (ii) the actual costs charged to the Corporation by outside counsel providing a legal opinion in form and substance satisfactory to the Corporation regarding the laws of the Jurisdiction of Organization.**

(b) **For each subsequent applicant organized in the applicable Jurisdiction of Organization ("Subsequent Non-U.S. Applicant"), if the Subsequent Non-U.S. Applicant does not otherwise terminate its application in accordance with (c) below: an amount equal to the fee charged to the Initial Applicant from the Jurisdiction of Organization, as determined in accordance with (a) above.**

(c) **The Non-U.S. Membership Applicant Foreign Legal Opinion Fee is non-refundable regardless of the outcome of the application process (i.e., approval, disapproval or expiration); however, an applicant will not be charged a Non-U.S. Membership Applicant Foreign Legal Opinion Fee if it terminates its application in writing within five (5) Business Days of being notified in writing by the Corporation of the Maximum Estimated Charge (for an Initial Applicant) or fee amount (for a Subsequent Non-U.S. Applicant), as applicable.**

(d) **If the applicant does not terminate its application in accordance with (c) above, then the applicant will be billed the applicable fee amount as determined by the Corporation in accordance with the above, with full payment due within ten (10) Business Days of receipt of an invoice from the Corporation, including payment instructions.**

II. FINES

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FICC MORTGAGE-BACKED SECURITIES DIVISION
SCHEDULE OF CHARGES DEALER ACCOUNT GROUP

I. FEES

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Non-U.S. Membership Applicant Foreign Legal Opinion Fee

(a) **For the initial applicant ("Initial Applicant") organized in a given non-U.S. jurisdiction ("Jurisdiction of Organization") to apply for membership, if the applicant does not otherwise terminate its application in accordance with (c) below: The lesser of (i) a maximum estimated charge ("Maximum Estimated Charge") and (ii) the actual costs charged to the Corporation by outside counsel providing a legal opinion in form and substance satisfactory to the Corporation regarding the laws of the Jurisdiction of Organization.**

(b) **For each subsequent applicant organized in the applicable Jurisdiction of Organization ("Subsequent Non-U.S. Applicant"), if the Subsequent Non-U.S. Applicant does not otherwise terminate its application in accordance with (c) below: an amount equal to the fee charged to the Initial Applicant from the Jurisdiction of Organization, as determined in accordance with (a) above.**

(c) **The Non-U.S. Membership Applicant Foreign Legal Opinion Fee is non-refundable regardless of the outcome of the application process (i.e., approval, disapproval or expiration); however, an applicant will not be charged a Non-U.S. Membership Applicant Foreign Legal Opinion Fee if it terminates its application in writing within five (5) Business Days of being notified in writing by the Corporation of the Maximum Estimated Charge (for an Initial Applicant) or fee amount (for a Subsequent Non-U.S. Applicant), as applicable.**

(d) **If the applicant does not terminate its application in accordance with (c) above, then the applicant will be billed the applicable fee amount as determined by the Corporation in accordance with the above, with full payment due within ten (10) Business Days of receipt of an invoice from the Corporation, including payment instructions.**

II. FINES

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