

OMB APPROVAL

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Page 1 of * 44

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

File No.* SR - 2020 - * 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) * ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action * Date Expires *

☐ 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

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

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

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 *).

Provide for a Passive Acknowledgement Process and Make Other Changes

Contact Information

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

First Name * Kristen Last Name * Lam
 Title * Director and Assistant General Counsel
 E-mail * klam1@dtcc.com
 Telephone * (212) 855-5258 Fax

Signature

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

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

(Title *)

Date 06/19/2020

Managing Director and Deputy General Counsel

By Nikki Poulos

(Name *)

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

npoulos@dtcc.com

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549	
For complete Form 19b-4 instructions please refer to the EFFT website.	
<div>Form 19b-4 Information *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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.
<div>Exhibit 1 - Notice of Proposed Rule Change *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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)
<div>Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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)
<div>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</div> <div><div>Add</div><div>Remove</div><div>View</div></div> <div>Exhibit Sent As Paper Document <input type="checkbox"/></div>	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.
<div>Exhibit 3 - Form, Report, or Questionnaire</div> <div><div>Add</div><div>Remove</div><div>View</div></div> <div>Exhibit Sent As Paper Document <input type="checkbox"/></div>	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.
<div>Exhibit 4 - Marked Copies</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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.
<div>Exhibit 5 - Proposed Rule Text</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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.
<div>Partial Amendment</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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 Proposed Rule Change

(a) The proposed rule change of Fixed Income Clearing Corporation (“FICC”) is attached hereto as Exhibit 5. The proposed rule change would amend the FICC Government Securities Division (“GSD”) Rulebook (“GSD Rules”) and the FICC Mortgage-Backed Securities Division (“MBSD” and together with GSD, each, a “Division”) Clearing Rules (“MSBD Rules,” and together with the GSD Rules, “Rules”)¹ in order to (i) provide for a passive acknowledgement process whereby any settling bank that does not timely acknowledge that it will settle its Funds-Only (Cash) Settlement Figures (as defined below) with FICC (i.e., acknowledge its intention to pay to or collect from FICC), or notify the Settlement Agent (as defined below) of its refusal to settle for one or more members² for which it is the designated Funds-Only Settling Bank or Cash Settling Bank (collectively, “FICC Settling Banks”) and has not otherwise been in contact with the Settlement Agent, would be deemed to have acknowledged its Funds-Only (Cash) Settlement Figures, (ii) codify FICC’s discretion to exclude a FICC Settling Bank’s balance from the FRB’s National Settlement Service (“NSS”) file in certain circumstances, and (iii) make certain technical and conforming changes.

(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 this proposed rule change is to (i) provide for a passive acknowledgement process whereby any FICC Settling Bank that does not timely acknowledge that it will settle its Funds-Only (Cash) Settlement Figures (as defined below) with FICC (i.e., acknowledge its intention to pay to or collect from FICC), or notify the Settlement Agent (as defined below) of its refusal to settle for one or more members for which it is the designated FICC Settling Bank and has not otherwise been in contact with the Settlement Agent, would be deemed to have acknowledged its Funds-Only (Cash) Settlement Figures, (ii) codify FICC’s discretion to exclude

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

² The use of “members” here refers to any participant that is required to appoint a Funds-Only Settling Bank or Cash Settling Bank, which includes GSD Netting Members, GSD CCIT Members, GSD Sponsoring Members, and MBSD Clearing Members. References hereinafter to the term “members” shall be used for ease of reference. See GSD Rule 13, Section 4(a) and MBSD Rule 3A, Section (a), supra note 1.

a FICC Settling Bank's balance from the NSS file in certain circumstances, and (iii) make certain conforming technical and conforming changes.

Background

Each Division provides a standardized, automated method for settling funds-only and cash settlement obligations, respectively, between each Division and its respective members' FICC Settling Banks. The funds-only settlement service of GSD and the cash settlement service of MBSD eliminate manual processing and reduce costs by aggregating, for GSD, the funds-only settlement payments and, for MSBD, the cash settlement payments due to or from a member, and then, automatically debiting or crediting such member's account at its FICC Settling Bank. Settlement is effected via the NSS.³

Current Process

Each member must designate a FICC Settling Bank to settle its funds-only (cash) obligations with FICC. Today, on each business day, as applicable, GSD and MBSD each calculates either a Funds-Only Settlement Amount or Cash Balance figure, respectively, for each member, and reports to its members and their respective FICC Settling Banks, a Net Funds-Only Settlement Figure⁴ (for GSD) and either a Total Debit Cash Balance Figure⁵ or a Total Credit Cash Balance Figure⁶ (for MBSD) (collectively, "Funds-Only (Cash) Settlement Figures").⁷ The

³ GSD Rule 13, Section 5(i) and MBSD Rule 11, Section 9(i), supra note 1.

⁴ Net Funds-Only Settlement Figure means the net amount of the Funds-Only Settlement Amounts of the Netting Members for which a Funds-Only Settling Bank Member is acting. GSD Rule 1, supra note 1.

⁵ Total Debit Cash Balance Figure means the sum of the Cash Balances which are debits of the Members for which a Cash Settling Bank Member is acting. MSBD Rule 1, supra note 1.

⁶ Total Credit Cash Balance Figures means the sum of the Cash Balances which are credits of the Members for which a Cash Settling Bank Member is acting. MSBD Rule 1, supra note 1.

⁷ For GSD, Funds-Only Settlement Amounts reflect: (i) changes in the value of securities when they are marked to market, (ii) cash adjustments related to securities trades, (iii) the pass-through of coupon payments for term repos or trade obligations that cross a coupon date, and (iv) other items, such as billing invoices. GSD Rule 13, Section 1, supra note 1. For MBSD, Cash Settlement amounts reflect: (i) the TBA Transaction Adjustment Payment, (ii) Net Pool Transaction Adjustment Payment, (iii) principal and interest payments for failing net pool settlement obligations (to the extent that they are not handled by the FedWire Securities Service Automated Claims Adjustment Process), and (iv) other items, such as Factor Update Adjustments and billing invoices. MBSD Rule 11, Section 7, supra note 1.

Depository Trust Company (“DTC”) acts as Settlement Agent (“Settlement Agent”)⁸ for FICC’s funds-only (cash) settlement process. Once the FICC Settling Banks receive their Funds-Only (Cash) Settlement Figures from the Settlement Agent, the FICC Settling Banks must submit either their (1) acknowledgement that they will settle their Funds-Only (Cash) Settlement Figures with FICC or (2) refusal to settle such amounts on behalf of one or more of their respective members.⁹ This acknowledgement or refusal submission occurs through a designated terminal system.¹⁰ If all of the FICC Settling Banks submit acknowledgements of their intent to settle, then the Settlement Agent will submit the requisite file to the FRB for processing through the NSS.

If a FICC Settling Bank notifies the Settlement Agent that the FICC Settling Bank refuses to pay the Funds-Only (Cash) Settlement Figure for a member, then FICC will exclude that member’s amount and the Settlement Agent will provide the FICC Settling Bank with a new Funds-Only (Cash) Settlement Figure that no longer includes the excluded member’s amount. The FICC Settling Bank must then immediately send a message to the Settlement Agent acknowledging the new amount.¹¹ The Settlement Agent will then submit the requisite file to the FRB for processing through the NSS.

The deadline for FICC Settling Banks to acknowledge or refuse is 30 minutes prior to the time at which debits and credits are executed via the NSS.¹² If a FICC Settling Bank does not acknowledge or refuse by this time, the Settlement Agent will use the most recent contact information available to contact the FICC Settling Bank. If the Settlement Agent is unable to contact the FICC Settling Bank or does not receive a response from the FICC Settling Bank as to the acknowledgement or refusal, FICC needs to determine whether to request an NSS extension

⁸ DTC Settlement Operations act as the Settlement Agent for GSD and MBSD. “Settlement Agent” means the bank or trust company that FICC may, from time to time, designate to act as its agent for purposes of interfacing with NSS for funds-only settlement pursuant to GSD Rule 13 (for GSD) and for Cash Settlement pursuant to MBSD Rule 11. GSD Rule 1 and MBSD Rule 1, supra note 1.

⁹ Currently, a FICC Settling Bank that settles only for itself may not refuse to settle for itself and, therefore, may opt out of the requirement to acknowledge its Funds-Only (Cash) Settlement Figures. GSD Rule 13, Section 5(b) and MBSD Rule 11, Section 9, supra note 1. The passive acknowledgement proposal, explained in Item 3(a)(i) below, would not apply to such FICC Settling Banks that have chosen to opt out, as further explained below.

¹⁰ GSD Rule 13, Section 5(b) and MBSD Rule 11, Section 9(b), supra note 1.

¹¹ GSD Rule 13, Section 5(c) and MBSD Rule 11, Section 9(c), supra note 1.

¹² For GSD, the NSS execution times are 10:00 a.m. and 3:15 p.m.; for MBSD, these times are 10:00 a.m. and 2:45 p.m. GSD Schedule of Timeframes, supra note 1, and MBSD Processing Schedule and Timeframes, available at <http://www.dtcc.com/clearing-services/ficc-mbsd/ficc-mbsd-user-documentation>.

while also determining whether to remove the FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file.

Today, failure of a FICC Settling Bank to timely respond to the Settlement Agent after posting of final settlement figures creates uncertainty with respect to timely completion of settlement at FICC. This is because today, FICC is not permitted under the Rules to submit the NSS file (through the Settlement Agent) unless all FICC Settling Banks in the file have acknowledged. FICC must therefore determine whether it should remove the Funds-Only (Cash) Settlement Figure of the unresponsive FICC Settling Bank from the NSS file in order to allow the processing of the rest of the NSS file for the other FICC Settling Banks that are part of the NSS file. If FICC does not remove the Funds-Only (Cash) Settlement Figure of the unresponsive FICC Settling Bank from the NSS file, then the NSS file cannot be created and the funds-only (cash) settlement cannot be completed for the other FICC Settling Banks that are part of the NSS file. As such, today, FICC may need to remove the Funds-Only (Cash) Settlement Figure of the unresponsive FICC Settling Bank from the NSS file in order to submit the NSS file and complete the funds-only (cash) settlement for the other FICC Settling Banks that are part of the NSS file, thus potentially delaying settlement of the NSS file. Such potential delay would arise from the time needed to remove the figure of the unresponsive FICC Settling Bank and then re-establish the NSS file. Moreover, with respect to the members who were using the particular FICC Settling Bank, FICC would need to settle individually with those members via the Fedwire Funds Service, which also presents the possibility of a delay because of the time it might take to complete this process individually with each affected member. To date, FICC has not had to perform the process of removing a FICC Settling Bank from the NSS file.

The proposed passive acknowledgement process that is discussed in Item 3(a)(i) below is aimed at addressing the situation discussed above where a FICC Settling Bank is unresponsive and cannot be reached. This would allow FICC to submit the NSS file (through the Settlement Agent) for NSS processing more timely, and thereby allow the funds-only (cash) settlement to be completed for the other FICC Settling Banks that are part of the NSS file.

Even with the implementation of the proposed passive acknowledgement process discussed in Item 3(a)(i) below, FICC must retain the discretion to remove the Funds-Only (Cash) Settlement Figure of a FICC Settling Bank from the NSS file.¹³ In other words, currently, FICC may remove the FICC Settling Bank's figure from the NSS file in the situation where a FICC Settling Bank is unresponsive and cannot be reached. Under the proposal, the need for FICC to do so would arise in the event that a FICC Settling Bank advises the Settlement Agent that it cannot yet determine whether to acknowledge or refuse. In such a circumstance, passive acknowledgement would not apply (as described below); however, as it gets closer to the NSS processing time, FICC may need to remove the FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file in order to allow funds-only (cash) settlement to be completed for the other FICC Settling Banks that are part of the NSS file and have affirmatively acknowledged their figure. FICC is proposing to codify its ability to remove the Funds-Only (Cash) Settlement Figure of the FICC Settling Bank from the NSS file. As FICC would be codifying this current practice with this proposed rule change, this proposed rule change would

¹³ This practice is currently not codified in the GSD Rules and MBSD Rules.

not change the current settlement process of FICC Settling Banks that are excluded from the NSS file. This proposed change is discussed in Item 3(a)(ii) below.

(i) **Proposed change to introduce passive acknowledgement process for FICC Settling Banks**

Proposed Passive Acknowledgement Process

FICC proposes to establish an “Acknowledgement Cutoff Time” after which FICC would apply the passive acknowledgement process if it is unable to reach the FICC Settling Bank.

The Acknowledgement Cutoff Time would be defined as the later of: (i) 30 minutes after the FICC Settling Banks have been notified that such payment is due or (ii) 30 minutes prior to the times established by FICC¹⁴ for the execution of funds-only (cash) settlement debits and credits via NSS.

If a FICC Settling Bank does not submit either (1) an acknowledgement that it will settle the Funds-Only (Cash) Settlement Figure with FICC or (2) a refusal to pay the Funds-Only (Cash) Settlement Figure by the “Acknowledgement Cutoff Time” and has not been in contact with the Settlement Agent, then the Settlement Agent would attempt to contact the FICC Settling Bank. If the Settlement Agent is able to contact the FICC Settling Bank and it notifies the Settlement Agent that the FICC Settling Bank cannot, at that time, submit its acknowledgement or refusal to pay its Funds-Only (Cash) Settlement Figure and that it needs more time, then the FICC Settling Bank would not be deemed to have acknowledged that it will settle such Funds-Only (Cash) Settlement Figure with FICC. However, if the FICC Settling Bank cannot be reached, then the FICC Settling Bank would be deemed to have acknowledged that it will settle such Funds-Only (Cash) Settlement Figure with FICC.

The passive acknowledgement process described herein would also apply in situations where a FICC Settling Bank is provided with a new Funds-Only (Cash) Settlement Figure after such FICC Settling Bank’s refusal to pay the Funds-Only (Cash) Settlement Figure for one or more members.

FICC would also revise the Rules to state that each FICC Settling Bank must ensure that it maintains accurate contact details with the Settlement Agent so that the Settlement Agent may contact the FICC Settling Bank regarding this settlement process and any settlement issues.

Proposed Changes to GSD Rule 13, Section 5 and MBSD Rule 11, Section 9

The proposed passive acknowledgement process will require changes to Section 5 of GSD Rule 13 and Section 9 of MBSD Rule 11. Specifically, FICC proposes to amend Section 5(b) of GSD Rule 13 to replace “by the applicable deadline” with “By the Acknowledgement Cutoff Time,” and move this phrase to the start of the first sentence. Section 5(b) would be further amended to add a sentence stating what the Acknowledgement Cutoff Time would be,

¹⁴ These times are currently 10:00 a.m. and 3:15 p.m. for GSD, and 10:00 a.m. and 2:45 p.m. for MBSD.

that is the later of (i) 30 minutes after the Funds-Only Settling Bank has been notified that such payment is due, or (ii) 30 minutes prior to the payment deadlines established by FICC. FICC also proposes to add a phrase at the end of Section 5(b) that would apply to Funds-Only Settling Banks that settle solely for their own accounts to state that if they choose to opt out of having to acknowledge their Funds-Only Settlement Amounts, new subsections (k) and (l) (described below) would not apply to them.¹⁵ The same changes would be made to Section 9(b) of MBSD Rule 11.

FICC proposes to amend Section 5(c) of GSD Rule 13 to delete the word “immediately” and to state that new subsection (k) would apply with respect to the new Net Funds-Only Settlement Figures of the Funds-Only Settling Bank that sent refusal messages. Similar changes would be made to Section 9(c) of MBSD Rule 11.

FICC proposes to amend Section 5 of GSD Rule 13 to add new subsection (i). Proposed subsection (i) would provide that the Settlement Agent uses the most recent contact information provided by the Funds-Only Settling Bank to the Settlement Agent. Proposed subsection (i) would also include a requirement that each Funds-Only Settling Bank maintains up-to-date and accurate contact details with the Settlement Agent on an ongoing basis. A similar subsection (i) would be added to Section 9 of MBSD Rule 11.

FICC proposes to amend Section 5 of GSD Rule 13 to add new subsection (l). Proposed subsection (l) would provide that the Settlement Agent would attempt to contact the Funds-Only Settling Bank if no acknowledgement or notice of refusal to settle on behalf of one or more Netting Members for which it is designated as the Funds-Only Settling Bank is received by the Acknowledgement Cutoff Time. If (i) the Settlement Agent is able to contact the Funds-Only Settling Bank and (ii) the Funds-Only Settling Bank notifies the Settlement Agent that it cannot, at that time, acknowledge or refuse their Net Funds-Only Settlement Figure, then the Funds-Only Settling Bank will not be deemed to have acknowledged its Net Funds-Only Settlement Figure. If the Funds-Only Settling Bank cannot be reached, the Funds-Only Settling Bank will be deemed to have acknowledged its Net Funds-Only Settlement Figure. FICC would also state that this proposed subsection (l) would not apply to a Funds-Only Settling Bank that settles solely for its own account and opts not to acknowledge its Net Funds-Only Settlement Figure. A similar subsection (l) would be added to Section 9 of MBSD Rule 11.

¹⁵ Proposed subsections (k) and (l) describe the proposed passive acknowledgement process. As described above, if a FICC Settling Bank that settles solely for its own account opts to not to acknowledge its own Funds-Only Settlement Figure, the passive acknowledgement process would not apply to such FICC Settling Banks because such FICC Settling Banks cannot refuse to settle for their own accounts. For operational convenience, FICC Settling Banks may choose to not acknowledge their own Funds-Only Settlement Figure because they cannot refuse to settle for their own accounts. Therefore, proposed subsections (k) and (l) would not apply to such FICC Settling Banks.

(ii) **Proposed change to allow FICC to exclude FICC Settling Bank balance from NSS file**

The proposed rule change would provide that if (1) passive acknowledgement does not apply because the FICC Settling Bank has notified the Settlement Agent that it cannot yet acknowledge or refuse its Funds-Only (Cash) Settlement Figure and (2) the payment deadline established by FICC is approaching, then FICC would have the ability to exclude the FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file. This would allow funds-only (cash) settlement to be completed for the other FICC Settling Banks that are part of the NSS file. As described above, as it gets closer to the payment deadline, FICC may need to remove the FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file in order to allow funds-only (cash) settlement to be completed for the other FICC Settling Banks that are part of the NSS file. As FICC would be codifying its current practice with this proposed rule change, this proposed change would not change the current settlement process of FICC Settling Banks that are excluded from the NSS file.

This proposed change is reflected in the second paragraph of new subsections (l) of Section 5 of GSD Rule 13 and Section 9 of MBSD Rule 11.

(iii) **Proposed technical and conforming changes**

FICC proposes to make certain technical changes. Specifically, to enhance clarity, FICC proposes to move current subsection (d) in GSD Rule 13, Section 5 to become proposed subsection (h) of GSD Rule 13, Section 5. In addition, FICC proposes to move current subsection (d) in MBSD Rule 11, Section 9 to become proposed subsection (h) of MBSD Rule 11, Section 9.

FICC also proposes to make certain conforming changes. For example, FICC proposes to revise the subsection numbers in GSD Rule 13, Section 5 and MBSD Rule 11, Section 9 because subsections were either proposed to be moved (as described in the preceding paragraph) or added. As another conforming change, FICC proposes to revise GSD Rule 1 and MBSD Rule 1 to add a new defined term ("Acknowledgement Cutoff Time").

FICC proposes to replace the first two references to Corporation with Settlement Agent in GSD Rule 13, Section 5(c). Similarly, FICC proposes to replace the reference to Corporation with Settlement Agent in MBSD Rule 11, Section 9(c). FICC believes these proposed changes would enhance accuracy and clarity when describing who the FICC Settling Banks must send a message to. In addition, in current subsection (j) (which is proposed to become subsection (m)) of Section 5 of GSD Rule 13, FICC would replace language regarding the "Corporation's Operations area" with the "Settlement Agent" and would use the newly defined term "Acknowledgement Cutoff Time." Similar changes would be made to current subsection (j) (which is proposed to become subsection (m)) of Section 9 of MBSD Rule 11.

FICC also proposes to change the reference from "DTC" to "the Settlement Agent" in GSD Rule 13, proposed Section 5(n) and MBSD Rule 11, proposed Section 9(n) for consistency and clarity.

(b) Statutory Basis

FICC believes this proposal is consistent with the requirements of the Securities Exchange Act of 1934 (the “Act”), and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, FICC believes this proposal is consistent with Section 17A(b)(3)(F) of the Act.¹⁶

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.¹⁷ By way of background, the funds-only (cash) settlement process at FICC reflects debits and credits of payments (such as mark-to-market) that are associated with securities transactions that will ultimately be subject to securities settlement. FICC believes that failure by a FICC Settling Bank to timely acknowledge that it will settle its Funds-Only (Cash) Settlement Figure with FICC or to refuse to pay its Funds-Only (Cash) Settlement Figure creates uncertainty with respect to the timely completion of funds-only (cash) settlement at FICC. FICC believes that the introduction of the proposed passive acknowledgement process described in Item 3(a)(i) above would help promote the prompt and accurate clearance and settlement of securities transactions in circumstances where a FICC Settling Bank has not responded by the Acknowledgement Cutoff Time and cannot be reached by the Settlement Agent. In such circumstances, as described above, FICC would deem that such FICC Settling Bank has acknowledged that it will settle its Funds-Only (Cash) Settlement Figures. This would enable FICC to submit the NSS file (through the Settlement Agent) as is for processing in a timely manner, and thereby enhance certainty with respect to the timely completion of settlement. Timely completion of such settlement at FICC for as many members as possible promotes the prompt and accurate clearance and settlement of securities transactions as a general matter, because the funds-only (cash) settlement process at FICC involves debits and credits, such as the mark-to-market on securities transactions that will ultimately be subject to securities settlement. As such, FICC believes the proposed change to introduce the passive acknowledgement process described in Item 3(a)(i) above is designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.¹⁸

FICC also believes that the proposal to codify FICC’s ability to exclude a FICC Settling Bank’s balance from the NSS file described in Item 3(a)(ii) above is designed the promote the prompt and accurate clearance and settlement of securities transactions.¹⁹ If a FICC Settling Bank notifies the Settlement Agent that it cannot yet acknowledge or refuse, FICC would not be able to submit the NSS file (through the Settlement Agent) with that FICC Settling Bank’s Funds-Only (Cash) Settlement Figure included. If the FICC Settling Bank does not ultimately

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

respond with either an acknowledgement or refusal, then FICC must have the ability to exclude such FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file. In this way, funds-only (cash) settlement can be completed for all other members. Therefore, FICC believes the proposed changes described in Item 3(a)(ii) above is designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.²⁰

FICC also believes that the proposed rule changes to make the technical and conforming changes, as described in Item 3(a)(iii) above, are designed to promote the prompt and accurate clearance and settlement of securities transactions by ensuring that the Rules remain clear and accurate to members and that members understand the funds-only settlement service and cash settlement service. Having clear and accurate Rules would facilitate members' understanding of those rules and provide members with increased predictability and certainty regarding their obligations. As such, FICC believes these proposed changes would promote the prompt and accurate clearance and settlement of securities, consistent with Section 17A(b)(3)(F) of the Act.²¹

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

FICC does not believe that the proposed rule changes described in Item 3(a)(i) above to introduce the passive acknowledgement process for FICC Settling Banks would have any impact on competition,²² because the proposed passive acknowledgement process would not have an impact on the FICC Settling Banks' current ability to timely acknowledge their Funds-Only (Cash) Settlement Figures, as it is intended to address situations where a FICC Settling Bank is not responding and cannot be reached. Moreover, as described above, FICC would continue to maintain flexibility and allow a FICC Settling Bank to request extra time if the FICC Settling Bank cannot affirmatively submit its (1) acknowledgement that it will settle its Funds-Only (Cash) Settlement Figure with FICC or (2) refusal to pay its Funds-Only (Cash) Settlement Figure, as long as the Settlement Agent is notified at or before the Acknowledgement Cutoff Time. If a FICC Settling Bank notifies the Settlement Agent that the FICC Settling Bank cannot, at that time, submit its acknowledgement that it will settle its Funds-Only (Cash) Settlement Figures with FICC or its refusal to pay its Funds-Only (Cash) Settlement Figures, then the FICC Settling Bank would not be deemed to have acknowledged that it will settle such Funds-Only (Cash) Settlement Figures with FICC. Therefore, FICC believes that the proposed passive acknowledgement process described in Item 3(a)(i) above would not have any impact on competition.

FICC also does not believe that the proposed changes to exclude a FICC Settling Bank's balance from the NSS file, as described in Item 3(a)(ii) above, would have any impact on competition²³ because this proposal, if invoked, would require the affected FICC Settling Bank

²⁰ Id.

²¹ Id.

²² 15 U.S.C. 78q-1(b)(3)(I).

²³ Id.

to send payment to FICC by wire, which is an alternate form of payment already available to the FICC Settling Banks. FICC believes that ready availability of a reasonable payment alternative would result in the rights and obligations of the FICC Settling Banks not being adversely affected. As such, FICC does not believe that the proposed changes to exclude a FICC Settling Bank's balance from the NSS file, as described in Item 3(a)(ii) above, would have any impact on competition.

FICC also does not believe that the proposed rule changes to make the technical and conforming changes described in Item 3(a)(iii) above would have an impact on competition.²⁴ These changes would simply provide additional clarity within the Rules and not affect members' rights and obligations.

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 change 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

FICC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act²⁵ for Commission action.

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

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

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

The proposed rule changes are based on a rule filing by DTC that proposed passive acknowledgement on the part of the DTC settling banks (SR-DTC-2015-011) among other changes. Concerning passive acknowledgement, FICC does not believe that there is a material

²⁴ Id.

²⁵ 15 U.S.C. 78s(b)(2).

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 Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act of 2010

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 Rules.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[____]; File No. SR-FICC-2020-006)

[DATE]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Provide for a Passive Acknowledgement Process and Make Other Changes

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 June __, 2020, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the FICC Government Securities Division (“GSD”) Rulebook (“GSD Rules”) and the FICC Mortgage-Backed Securities Division (“MBSD” and together with GSD, each, a “Division”) Clearing Rules (“MSBD Rules,” and together with the GSD Rules, “Rules”)³ in order to (i) provide for a passive acknowledgement process whereby any settling bank that does not timely acknowledge that it will settle its Funds-Only (Cash) Settlement Figures (as defined below) with FICC (i.e., acknowledge its intention to pay to or collect from FICC), or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms not defined herein are defined in the Rules, available at <http://www.dtcc.com/legal/rules-and-procedures>.

notify the Settlement Agent (as defined below) of its refusal to settle for one or more members⁴ for which it is the designated Funds-Only Settling Bank or Cash Settling Bank (collectively, “FICC Settling Banks”) and has not otherwise been in contact with the Settlement Agent, would be deemed to have acknowledged its Funds-Only (Cash) Settlement Figures, (ii) codify FICC’s discretion to exclude a FICC Settling Bank’s balance from the FRB’s National Settlement Service (“NSS”) file in certain circumstances, and (iii) make certain technical and conforming changes.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this proposed rule change is to (i) provide for a passive acknowledgement process whereby any FICC Settling Bank that does not timely

⁴ The use of “members” here refers to any participant that is required to appoint a Funds-Only Settling Bank or Cash Settling Bank, which includes GSD Netting Members, GSD CCIT Members, GSD Sponsoring Members, and MBSD Clearing Members. References hereinafter to the term “members” shall be used for ease of reference. See GSD Rule 13, Section 4(a) and MBSD Rule 3A, Section (a), supra note 3.

acknowledge that it will settle its Funds-Only (Cash) Settlement Figures (as defined below) with FICC (i.e., acknowledge its intention to pay to or collect from FICC), or notify the Settlement Agent (as defined below) of its refusal to settle for one or more members for which it is the designated FICC Settling Bank and has not otherwise been in contact with the Settlement Agent, would be deemed to have acknowledged its Funds-Only (Cash) Settlement Figures, (ii) codify FICC's discretion to exclude a FICC Settling Bank's balance from the NSS file in certain circumstances, and (iii) make certain conforming technical and conforming changes.

Background

Each Division provides a standardized, automated method for settling funds-only and cash settlement obligations, respectively, between each Division and its respective members' FICC Settling Banks. The funds-only settlement service of GSD and the cash settlement service of MBSD eliminate manual processing and reduce costs by aggregating, for GSD, the funds-only settlement payments and, for MSBD, the cash settlement payments due to or from a member, and then, automatically debiting or crediting such member's account at its FICC Settling Bank. Settlement is effected via the NSS.⁵

Current Process

Each member must designate a FICC Settling Bank to settle its funds-only (cash) obligations with FICC. Today, on each business day, as applicable, GSD and MBSD each calculates either a Funds-Only Settlement Amount or Cash Balance figure, respectively, for each member, and reports to its members and their respective FICC

⁵ GSD Rule 13, Section 5(i) and MBSD Rule 11, Section 9(i), supra note 3.

Settling Banks, a Net Funds-Only Settlement Figure⁶ (for GSD) and either a Total Debit Cash Balance Figure⁷ or a Total Credit Cash Balance Figure⁸ (for MBSD) (collectively, “Funds-Only (Cash) Settlement Figures”).⁹ The Depository Trust Company (“DTC”) acts as Settlement Agent (“Settlement Agent”)¹⁰ for FICC’s funds-only (cash) settlement process. Once the FICC Settling Banks receive their Funds-Only (Cash) Settlement Figures from the Settlement Agent, the FICC Settling Banks must submit either their (1) acknowledgement that they will settle their Funds-Only (Cash) Settlement Figures

⁶ Net Funds-Only Settlement Figure means the net amount of the Funds-Only Settlement Amounts of the Netting Members for which a Funds-Only Settling Bank Member is acting. GSD Rule 1, supra note 3.

⁷ Total Debit Cash Balance Figure means the sum of the Cash Balances which are debits of the Members for which a Cash Settling Bank Member is acting. MSBD Rule 1, supra note 3.

⁸ Total Credit Cash Balance Figures means the sum of the Cash Balances which are credits of the Members for which a Cash Settling Bank Member is acting. MSBD Rule 1, supra note 3.

⁹ For GSD, Funds-Only Settlement Amounts reflect: (i) changes in the value of securities when they are marked to market, (ii) cash adjustments related to securities trades, (iii) the pass-through of coupon payments for term repos or trade obligations that cross a coupon date, and (iv) other items, such as billing invoices. GSD Rule 13, Section 1, supra note 3. For MBSD, Cash Settlement amounts reflect: (i) the TBA Transaction Adjustment Payment, (ii) Net Pool Transaction Adjustment Payment, (iii) principal and interest payments for failing net pool settlement obligations (to the extent that they are not handled by the FedWire Securities Service Automated Claims Adjustment Process), and (iv) other items, such as Factor Update Adjustments and billing invoices. MBSD Rule 11, Section 7, supra note 3.

¹⁰ DTC Settlement Operations act as the Settlement Agent for GSD and MBSD. “Settlement Agent” means the bank or trust company that FICC may, from time to time, designate to act as its agent for purposes of interfacing with NSS for funds-only settlement pursuant to GSD Rule 13 (for GSD) and for Cash Settlement pursuant to MBSD Rule 11. GSD Rule 1 and MBSD Rule 1, supra note 3.

with FICC or (2) refusal to settle such amounts on behalf of one or more of their respective members.¹¹ This acknowledgement or refusal submission occurs through a designated terminal system.¹² If all of the FICC Settling Banks submit acknowledgements of their intent to settle, then the Settlement Agent will submit the requisite file to the FRB for processing through the NSS.

If a FICC Settling Bank notifies the Settlement Agent that the FICC Settling Bank refuses to pay the Funds-Only (Cash) Settlement Figure for a member, then FICC will exclude that member's amount and the Settlement Agent will provide the FICC Settling Bank with a new Funds-Only (Cash) Settlement Figure that no longer includes the excluded member's amount. The FICC Settling Bank must then immediately send a message to the Settlement Agent acknowledging the new amount.¹³ The Settlement Agent will then submit the requisite file to the FRB for processing through the NSS.

The deadline for FICC Settling Banks to acknowledge or refuse is 30 minutes prior to the time at which debits and credits are executed via the NSS.¹⁴ If a FICC Settling Bank does not acknowledge or refuse by this time, the Settlement Agent will use

¹¹ Currently, a FICC Settling Bank that settles only for itself may not refuse to settle for itself and, therefore, may opt out of the requirement to acknowledge its Funds-Only (Cash) Settlement Figures. GSD Rule 13, Section 5(b) and MBSD Rule 11, Section 9, supra note 3. The passive acknowledgement proposal, explained in Item 3(a)(i) below, would not apply to such FICC Settling Banks that have chosen to opt out, as further explained below.

¹² GSD Rule 13, Section 5(b) and MBSD Rule 11, Section 9(b), supra note 3.

¹³ GSD Rule 13, Section 5(c) and MBSD Rule 11, Section 9(c), supra note 3.

¹⁴ For GSD, the NSS execution times are 10:00 a.m. and 3:15 p.m.; for MBSD, these times are 10:00 a.m. and 2:45 p.m. GSD Schedule of Timeframes, supra note 3, and MBSD Processing Schedule and Timeframes, available at <http://www.dtcc.com/clearing-services/ficc-mbsd/ficc-mbsd-user-documentation>.

the most recent contact information available to contact the FICC Settling Bank. If the Settlement Agent is unable to contact the FICC Settling Bank or does not receive a response from the FICC Settling Bank as to the acknowledgement or refusal, FICC needs to determine whether to request an NSS extension while also determining whether to remove the FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file.

Today, failure of a FICC Settling Bank to timely respond to the Settlement Agent after posting of final settlement figures creates uncertainty with respect to timely completion of settlement at FICC. This is because today, FICC is not permitted under the Rules to submit the NSS file (through the Settlement Agent) unless all FICC Settling Banks in the file have acknowledged. FICC must therefore determine whether it should remove the Funds-Only (Cash) Settlement Figure of the unresponsive FICC Settling Bank from the NSS file in order to allow the processing of the rest of the NSS file for the other FICC Settling Banks that are part of the NSS file. If FICC does not remove the Funds-Only (Cash) Settlement Figure of the unresponsive FICC Settling Bank from the NSS file, then the NSS file cannot be created and the funds-only (cash) settlement cannot be completed for the other FICC Settling Banks that are part of the NSS file. As such, today, FICC may need to remove the Funds-Only (Cash) Settlement Figure of the unresponsive FICC Settling Bank from the NSS file in order to submit the NSS file and complete the funds-only (cash) settlement for the other FICC Settling Banks that are part of the NSS file, thus potentially delaying settlement of the NSS file. Such potential delay would arise from the time needed to remove the figure of the unresponsive FICC Settling Bank and then re-establish the NSS file. Moreover, with respect to the members who

were using the particular FICC Settling Bank, FICC would need to settle individually with those members via the Fedwire Funds Service, which also presents the possibility of a delay because of the time it might take to complete this process individually with each affected member. To date, FICC has not had to perform the process of removing a FICC Settling Bank from the NSS file.

The proposed passive acknowledgement process that is discussed in Item 3(a)(i) below is aimed at addressing the situation discussed above where a FICC Settling Bank is unresponsive and cannot be reached. This would allow FICC to submit the NSS file (through the Settlement Agent) for NSS processing more timely, and thereby allow the funds-only (cash) settlement to be completed for the other FICC Settling Banks that are part of the NSS file.

Even with the implementation of the proposed passive acknowledgement process discussed in Item 3(a)(i) below, FICC must retain the discretion to remove the Funds-Only (Cash) Settlement Figure of a FICC Settling Bank from the NSS file.¹⁵ In other words, currently, FICC may remove the FICC Settling Bank's figure from the NSS file in the situation where a FICC Settling Bank is unresponsive and cannot be reached. Under the proposal, the need for FICC to do so would arise in the event that a FICC Settling Bank advises the Settlement Agent that it cannot yet determine whether to acknowledge or refuse. In such a circumstance, passive acknowledgement would not apply (as described below); however, as it gets closer to the NSS processing time, FICC may need to remove the FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file in order to allow funds-only (cash) settlement to be completed for the other FICC

¹⁵ This practice is currently not codified in the GSD Rules and MBSD Rules.

Settling Banks that are part of the NSS file and have affirmatively acknowledged their figure. FICC is proposing to codify its ability to remove the Funds-Only (Cash) Settlement Figure of the FICC Settling Bank from the NSS file. As FICC would be codifying this current practice with this proposed rule change, this proposed rule change would not change the current settlement process of FICC Settling Banks that are excluded from the NSS file. This proposed change is discussed in Item 3(a)(ii) below.

(i) **Proposed change to introduce passive acknowledgement process for FICC Settling Banks**

Proposed Passive Acknowledgement Process

FICC proposes to establish an “Acknowledgement Cutoff Time” after which FICC would apply the passive acknowledgement process if it is unable to reach the FICC Settling Bank.

The Acknowledgement Cutoff Time would be defined as the later of: (i) 30 minutes after the FICC Settling Banks have been notified that such payment is due or (ii) 30 minutes prior to the times established by FICC¹⁶ for the execution of funds-only (cash) settlement debits and credits via NSS.

If a FICC Settling Bank does not submit either (1) an acknowledgement that it will settle the Funds-Only (Cash) Settlement Figure with FICC or (2) a refusal to pay the Funds-Only (Cash) Settlement Figure by the “Acknowledgement Cutoff Time” and has not been in contact with the Settlement Agent, then the Settlement Agent would attempt to contact the FICC Settling Bank. If the Settlement Agent is able to contact the FICC Settling Bank and it notifies the Settlement Agent that the FICC Settling Bank cannot, at

¹⁶ These times are currently 10:00 a.m. and 3:15 p.m. for GSD, and 10:00 a.m. and 2:45 p.m. for MBSD.

that time, submit its acknowledgement or refusal to pay its Funds-Only (Cash) Settlement Figure and that it needs more time, then the FICC Settling Bank would not be deemed to have acknowledged that it will settle such Funds-Only (Cash) Settlement Figure with FICC. However, if the FICC Settling Bank cannot be reached, then the FICC Settling Bank would be deemed to have acknowledged that it will settle such Funds-Only (Cash) Settlement Figure with FICC.

The passive acknowledgement process described herein would also apply in situations where a FICC Settling Bank is provided with a new Funds-Only (Cash) Settlement Figure after such FICC Settling Bank's refusal to pay the Funds-Only (Cash) Settlement Figure for one or more members.

FICC would also revise the Rules to state that each FICC Settling Bank must ensure that it maintains accurate contact details with the Settlement Agent so that the Settlement Agent may contact the FICC Settling Bank regarding this settlement process and any settlement issues.

Proposed Changes to GSD Rule 13, Section 5 and MBSD Rule 11, Section 9

The proposed passive acknowledgement process will require changes to Section 5 of GSD Rule 13 and Section 9 of MBSD Rule 11. Specifically, FICC proposes to amend Section 5(b) of GSD Rule 13 to replace "by the applicable deadline" with "By the Acknowledgement Cutoff Time," and move this phrase to the start of the first sentence. Section 5(b) would be further amended to add a sentence stating what the Acknowledgement Cutoff Time would be, that is the later of (i) 30 minutes after the Funds-Only Settling Bank has been notified that such payment is due, or (ii) 30 minutes prior to the payment deadlines established by FICC. FICC also proposes to add a phrase

at the end of Section 5(b) that would apply to Funds-Only Settling Banks that settle solely for their own accounts to state that if they choose to opt out of having to acknowledge their Funds-Only Settlement Amounts, new subsections (k) and (l) (described below) would not apply to them.¹⁷ The same changes would be made to Section 9(b) of MBSD Rule 11.

FICC proposes to amend Section 5(c) of GSD Rule 13 to delete the word “immediately” and to state that new subsection (k) would apply with respect to the new Net Funds-Only Settlement Figures of the Funds-Only Settling Bank that sent refusal messages. Similar changes would be made to Section 9(c) of MBSD Rule 11.

FICC proposes to amend Section 5 of GSD Rule 13 to add new subsection (i). Proposed subsection (i) would provide that the Settlement Agent uses the most recent contact information provided by the Funds-Only Settling Bank to the Settlement Agent. Proposed subsection (i) would also include a requirement that each Funds-Only Settling Bank maintains up-to-date and accurate contact details with the Settlement Agent on an ongoing basis. A similar subsection (i) would be added to Section 9 of MBSD Rule 11.

FICC proposes to amend Section 5 of GSD Rule 13 to add new subsection (l). Proposed subsection (l) would provide that the Settlement Agent would attempt to contact the Funds-Only Settling Bank if no acknowledgement or notice of refusal to settle

¹⁷ Proposed subsections (k) and (l) describe the proposed passive acknowledgement process. As described above, if a FICC Settling Bank that settles solely for its own account opts to not to acknowledge its own Funds-Only Settlement Figure, the passive acknowledgement process would not apply to such FICC Settling Banks because such FICC Settling Banks cannot refuse to settle for their own accounts. For operational convenience, FICC Settling Banks may choose to not acknowledge their own Funds-Only Settlement Figure because they cannot refuse to settle for their own accounts. Therefore, proposed subsections (k) and (l) would not apply to such FICC Settling Banks.

on behalf of one or more Netting Members for which it is designated as the Funds-Only Settling Bank is received by the Acknowledgement Cutoff Time. If (i) the Settlement Agent is able to contact the Funds-Only Settling Bank and (ii) the Funds-Only Settling Bank notifies the Settlement Agent that it cannot, at that time, acknowledge or refuse their Net Funds-Only Settlement Figure, then the Funds-Only Settling Bank will not be deemed to have acknowledged its Net Funds-Only Settlement Figure. If the Funds-Only Settling Bank cannot be reached, the Funds-Only Settling Bank will be deemed to have acknowledged its Net Funds-Only Settlement Figure. FICC would also state that this proposed subsection (l) would not apply to a Funds-Only Settling Bank that settles solely for its own account and opts not to acknowledge its Net Funds-Only Settlement Figure. A similar subsection (l) would be added to Section 9 of MBSD Rule 11.

(ii) **Proposed change to allow FICC to exclude FICC Settling Bank balance from NSS file**

The proposed rule change would provide that if (1) passive acknowledgement does not apply because the FICC Settling Bank has notified the Settlement Agent that it cannot yet acknowledge or refuse its Funds-Only (Cash) Settlement Figure and (2) the payment deadline established by FICC is approaching, then FICC would have the ability to exclude the FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file. This would allow funds-only (cash) settlement to be completed for the other FICC Settling Banks that are part of the NSS file. As described above, as it gets closer to the payment deadline, FICC may need to remove the FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file in order to allow funds-only (cash) settlement to be completed for the other FICC Settling Banks that are part of the NSS file. As FICC would be codifying its current practice with this proposed rule change, this proposed

change would not change the current settlement process of FICC Settling Banks that are excluded from the NSS file.

This proposed change is reflected in the second paragraph of new subsections (l) of Section 5 of GSD Rule 13 and Section 9 of MBSD Rule 11.

(iii) Proposed technical and conforming changes

FICC proposes to make certain technical changes. Specifically, to enhance clarity, FICC proposes to move current subsection (d) in GSD Rule 13, Section 5 to become proposed subsection (h) of GSD Rule 13, Section 5. In addition, FICC proposes to move current subsection (d) in MBSD Rule 11, Section 9 to become proposed subsection (h) of MBSD Rule 11, Section 9.

FICC also proposes to make certain conforming changes. For example, FICC proposes to revise the subsection numbers in GSD Rule 13, Section 5 and MSBD Rule 11, Section 9 because subsections were either proposed to be moved (as described in the preceding paragraph) or added. As another conforming change, FICC proposes to revise GSD Rule 1 and MBSD Rule 1 to add a new defined term (“Acknowledgement Cutoff Time”).

FICC proposes to replace the first two references to Corporation with Settlement Agent in GSD Rule 13, Section 5(c). Similarly, FICC proposes to replace the reference to Corporation with Settlement Agent in MBSD Rule 11, Section 9(c). FICC believes these proposed changes would enhance accuracy and clarity when describing who the FICC Settling Banks must send a message to. In addition, in current subsection (j) (which is proposed to become subsection (m)) of Section 5 of GSD Rule 13, FICC would replace language regarding the “Corporation’s Operations area” with the “Settlement Agent” and

would use the newly defined term “Acknowledgement Cutoff Time.” Similar changes would be made to current subsection (j) (which is proposed to become subsection (m)) of Section 9 of MBSD Rule 11.

FICC also proposes to change the reference from “DTC” to “the Settlement Agent” in GSD Rule 13, proposed Section 5(n) and MBSD Rule 11, proposed Section 9(n) for consistency and clarity.

2. Statutory Basis

FICC believes this proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, FICC believes this proposal is consistent with Section 17A(b)(3)(F) of the Act.¹⁸

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.¹⁹ By way of background, the funds-only (cash) settlement process at FICC reflects debits and credits of payments (such as mark-to-market) that are associated with securities transactions that will ultimately be subject to securities settlement. FICC believes that failure by a FICC Settling Bank to timely acknowledge that it will settle its Funds-Only (Cash) Settlement Figure with FICC or to refuse to pay its Funds-Only (Cash) Settlement Figure creates uncertainty with respect to the timely completion of funds-only (cash) settlement at FICC. FICC believes that the introduction of the proposed passive acknowledgement process described in Item 3(a)(i) above would help promote the prompt and accurate clearance and settlement of securities transactions in circumstances

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ Id.

where a FICC Settling Bank has not responded by the Acknowledgement Cutoff Time and cannot be reached by the Settlement Agent. In such circumstances, as described above, FICC would deem that such FICC Settling Bank has acknowledged that it will settle its Funds-Only (Cash) Settlement Figures. This would enable FICC to submit the NSS file (through the Settlement Agent) as is for processing in a timely manner, and thereby enhance certainty with respect to the timely completion of settlement. Timely completion of such settlement at FICC for as many members as possible promotes the prompt and accurate clearance and settlement of securities transactions as a general matter, because the funds-only (cash) settlement process at FICC involves debits and credits, such as the mark-to-market on securities transactions that will ultimately be subject to securities settlement. As such, FICC believes the proposed change to introduce the passive acknowledgement process described in Item 3(a)(i) above is designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.²⁰

FICC also believes that the proposal to codify FICC's ability to exclude a FICC Settling Bank's balance from the NSS file described in Item 3(a)(ii) above is designed to promote the prompt and accurate clearance and settlement of securities transactions.²¹ If a FICC Settling Bank notifies the Settlement Agent that it cannot yet acknowledge or refuse, FICC would not be able to submit the NSS file (through the Settlement Agent) with that FICC Settling Bank's Funds-Only (Cash) Settlement Figure included. If the FICC Settling Bank does not ultimately respond with either an acknowledgement or

²⁰ Id.

²¹ Id.

refusal, then FICC must have the ability to exclude such FICC Settling Bank's Funds-Only (Cash) Settlement Figure from the NSS file. In this way, funds-only (cash) settlement can be completed for all other members. Therefore, FICC believes the proposed changes described in Item 3(a)(ii) above is designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.²²

FICC also believes that the proposed rule changes to make the technical and conforming changes, as described in Item 3(a)(iii) above, are designed to promote the prompt and accurate clearance and settlement of securities transactions by ensuring that the Rules remain clear and accurate to members and that members understand the funds-only settlement service and cash settlement service. Having clear and accurate Rules would facilitate members' understanding of those rules and provide members with increased predictability and certainty regarding their obligations. As such, FICC believes these proposed changes would promote the prompt and accurate clearance and settlement of securities, consistent with Section 17A(b)(3)(F) of the Act.²³

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

FICC does not believe that the proposed rule changes described in Item 3(a)(i) above to introduce the passive acknowledgement process for FICC Settling Banks would have any impact on competition,²⁴ because the proposed passive acknowledgement process would not have an impact on the FICC Settling Banks' current ability to timely

²² Id.

²³ Id.

²⁴ 15 U.S.C. 78q-1(b)(3)(I).

acknowledge their Funds-Only (Cash) Settlement Figures, as it is intended to address situations where a FICC Settling Bank is not responding and cannot be reached. Moreover, as described above, FICC would continue to maintain flexibility and allow a FICC Settling Bank to request extra time if the FICC Settling Bank cannot affirmatively submit its (1) acknowledgement that it will settle its Funds-Only (Cash) Settlement Figure with FICC or (2) refusal to pay its Funds-Only (Cash) Settlement Figure, as long as the Settlement Agent is notified at or before the Acknowledgement Cutoff Time. If a FICC Settling Bank notifies the Settlement Agent that the FICC Settling Bank cannot, at that time, submit its acknowledgement that it will settle its Funds-Only (Cash) Settlement Figures with FICC or its refusal to pay its Funds-Only (Cash) Settlement Figures, then the FICC Settling Bank would not be deemed to have acknowledged that it will settle such Funds-Only (Cash) Settlement Figures with FICC. Therefore, FICC believes that the proposed passive acknowledgement process described in Item 3(a)(i) above would not have any impact on competition.

FICC also does not believe that the proposed changes to exclude a FICC Settling Bank's balance from the NSS file, as described in Item 3(a)(ii) above, would have any impact on competition²⁵ because this proposal, if invoked, would require the affected FICC Settling Bank to send payment to FICC by wire, which is an alternate form of payment already available to the FICC Settling Banks. FICC believes that ready availability of a reasonable payment alternative would result in the rights and obligations of the FICC Settling Banks not being adversely affected. As such, FICC does not believe

²⁵ Id.

that the proposed changes to exclude a FICC Settling Bank's balance from the NSS file, as described in Item 3(a)(ii) above, would have any impact on competition.

FICC also does not believe that the proposed rule changes to make the technical and conforming changes described in Item 3(a)(iii) above would have an impact on competition.²⁶ These changes would simply provide additional clarity within the Rules and not affect members' rights and obligations.

(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 change have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

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

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

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

²⁶ Id.

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-2020-006 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FICC-2020-006. 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-2020-006 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.²⁷

Secretary

²⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Bold and underlined text indicates proposed added language

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

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

RULE 1 – DEFINITIONS

Unless the context requires otherwise, the terms defined in this Rule shall, for all purposes of these Rules, have the meanings herein specified.

* * *

Accrued Repo Interest-to-Date

The term “Accrued Repo Interest-to-Date” means, on a particular Business Day, as regards an outstanding Repo Transaction, the product of: (1) the original Contract Value of the Start Leg, (2) the Contract Repo Rate, and (3) the number of days between the next Scheduled Settlement Date and the Start Leg Date, divided by 360.

Acknowledgement Cutoff Time

The term “Acknowledgement Cutoff Time” shall have the meaning given to that term in Section 5(b) of Rule 13.

Actual Deposit

The term “Actual Deposit” shall have the meaning given that term in Section 4 of Rule 4.

* * *

RULE 13 – FUNDS-ONLY SETTLEMENT

* * *

Section 5- Funds-Only Settlement Amount Payment Process

All payments of Funds-Only Settlement Amounts by a Netting Member to the Corporation, and all collections of Funds-Only Settlement Amounts by a Netting Member from the Corporation, shall be done through the Funds-Only Settling Banks pursuant to the following process:

(a) As stated in Section 2 above, one or more times on each Business Day, the Corporation shall make available to the Funds-Only Settling Banks the Funds-Only Settlement Amounts of all of the Netting Members for which the Banks are acting and the Banks' Net Funds-Only Settlement Figures. If the Funds-Only Settling Bank's Net Funds-Only Settlement Figure is a debit, it shall pay such amount to the Corporation in the manner provided in this Section by the deadline established by the Corporation in Section 6 of this Rule. If the Funds-Only Settling Bank's Net Funds-Only Settlement Figure is a credit, it shall receive such amount from the Corporation in the manner provided in this Section by the deadline established by the Corporation in Section 6 of this Rule.

(b) ~~By the deadline established by the Corporation as announced in notices issued by the Corporation.~~By the Acknowledgement Cutoff Time, the Funds-Only Settling Banks, without exception, must acknowledge to the Corporation via the designated terminal system their Net Funds-Only Settlement Figures and (1) their intention to settle with the Corporation their Net Funds-Only Settlement Figures ~~by the applicable deadline~~, or (2) their refusal to settle for one or more particular Netting Members. The Acknowledgement Cutoff Time shall be the later of: (i) 30 minutes after the Funds-Only Settling Bank has been notified that such payment is due, or (ii) 30 minutes prior to the payment deadlines established by the Corporation. Notwithstanding the foregoing, a Funds-Only Settling Bank that is a Netting Member and settles solely for its own account may opt to not acknowledge its Funds-Only Settlement Amount; if such Funds-Only Settling Bank chooses to opt out, it shall not be subject to subsections (k) and (l) below.

(c) If the Funds-Only Settling Bank sends refusal messages and its new Net Funds-Only Settlement Figure is a credit, it must send a message to the Settlement Agent~~Corporation~~ immediately after the refusal message acknowledging that amount. This new Net Funds-Only Settlement Figure shall be subject to subsection (k) below. If its new Net Funds-Only Settlement Figure is a debit, the Funds-Only Settling Bank must send a message to the Settlement Agent~~Corporation~~ immediately after the refusal messages acknowledging its intention to settle the new amount with the Corporation by the payment deadline.

~~(d) A Funds-Only Settling Bank that cannot send an acknowledgement or refusal message to the Corporation due to an operational issue may telephone its instructions to Corporation's Operations area to the number specified in the Corporation's notices.~~

~~(e)~~(d) A refusal to settle by the Funds-Only Settling Bank for a particular Netting Member is a refusal to settle all accounts of the Netting Member. The Funds-Only Settling Bank cannot

refuse to settle only some of the accounts of the Member if the Member has multiple accounts at the Corporation.

~~(f)~~(e) If the Funds-Only Settling Bank does not acknowledge, or sends a refusal regarding, the Netting Member's Funds-Only Settlement Amount that is a debit or if the Bank acknowledges the amount but then does not settle the payment, the Netting Member shall remain obligated, pursuant to the Rules, to pay such Amount by the payment deadline and shall do so by causing such payment to be made to the depository institution designated by the Corporation from time to time to receive such payment.

~~(g)~~(f) A Funds-Only Settling Bank with a Net Funds-Only Settlement Figure that is a debit that has sent an acknowledgement to the Corporation must settle such amount pursuant to the process set forth herein by the payment deadline established by the Corporation in Section 6 of this Rule.

~~(h)~~(g) DTC provides the Corporation with services with respect to the Corporation's Funds-Only Settlement process as described herein and in accordance with the Rules. DTC will act as Settlement Agent (as that term is used in the relevant FRB's Operating Circular 12 and in these Rules) for the Corporation and for the Corporation's Funds-Only Settling Banks with respect to the FRB's NSS, as the means of effecting Funds-Only Settlement.

(h) A Funds-Only Settling Bank that cannot send an acknowledgement or refusal message to the Corporation due to an operational issue may telephone its instructions to the Settlement Agent.

(i) The Settlement Agent uses the most recent contact information provided by the Funds-Only Settling Bank to the Settlement Agent. Each Funds-Only Settling Bank must ensure that it maintains up-to-date and accurate contact details with the Settlement Agent on an ongoing basis when previously provided contact details are no longer accurate, to facilitate the Settlement Agent's ability to contact a Funds-Only Settling Bank regarding this settlement process and any settlement issues.

~~(i)~~(j) Funds-Only Settling Banks must settle their Net Funds-Only Settlement Figures via the FRB's NSS. The Settlement Agent will send a pre-advice to each Funds-Only Settling Bank, notifying it that the Settlement Agent is about to send its NSS transmission to the FRB. NSS will allow the Corporation's Settlement Agent to instruct the relevant FRB to debit or credit, as applicable, the Funds-Only Settling Bank's account at the FRB by the requisite amount.

(k) If a Funds-Only Settling Bank does not, by the Acknowledgement Cutoff Time, either: (i) affirmatively acknowledge its Net Funds-Only Settlement Figure or (ii) notify the Settlement Agent that it refuses to settle for one or more Netting Members for which it is the designated Funds-Only Settling Bank, then, at the Acknowledgement Cutoff Time, the Funds-Only Settling Bank is deemed to have acknowledged its Net Funds-Only Settlement Figure. If the Net Funds-Only Settlement Figure is a debit, then the Funds-Only Settling Bank's FRB account will be charged; if the Net Funds-Only Settlement Figure is a credit, then the Funds-Only Settling Bank's FRB account will be credited. This subsection

(k) does not apply to a Funds-Only Settling Bank that settles solely for its own account and opts not to acknowledge its Net Funds-Only Settlement Figure.

(l) The Settlement Agent will attempt to contact the Funds-Only Settling Bank if no acknowledgement or notice of a refusal to settle on behalf of one or more Netting Members for which it is designated as the Funds-Only Settling Bank is received by the Acknowledgement Cutoff Time. If (x) the Settlement Agent is able to contact the Funds-Only Settling Bank, and (y) the Funds-Only Settling Bank notifies the Settlement Agent that it cannot, at that time, acknowledge or refuse their Net Funds-Only Settlement Figure, then the Funds-Only Settling Bank will not be deemed to have acknowledged its Net Funds-Only Settlement Figure. If the Funds-Only Settling Bank cannot be reached, the Funds-Only Settling Bank will be deemed to have acknowledged its Net Funds-Only Settlement Figure.

The Corporation may exclude a Funds-Only Settling Bank's balance from the NSS file if the Funds-Only Settling Bank (i) does not acknowledge its Net Funds-Only Settlement Figure by the Acknowledgement Cutoff Time or does not acknowledge its new Net Funds-Only Settlement Figure pursuant to subsection (c) above by the Acknowledgement Cutoff Time and (ii) is not deemed to have acknowledged its Net Funds-Only Settlement Figure or its new Net Funds-Only Settlement Figure pursuant to subsection (c) above because the Funds-Only Settling Bank has notified the Settlement Agent that it is unable to affirmatively acknowledge its Net Funds-Only Settlement Figure or that it refuses to settle on behalf of a Member.

This subsection (l) does not apply to a Funds-Only Settling Bank that settles solely for its own account and opts to not acknowledge its Net Funds-Only Settlement Figure.

(j)(m) If a Funds-Only Settling Bank is experiencing extenuating circumstances and, as a result, needs to opt out of NSS for one Business Day, the Funds-Only Settling Bank must notify the ~~Corporation's Operations area~~ **Settlement Agent** prior to the **Acknowledgement Cutoff Time**~~acknowledgement deadline~~. The Netting Member shall remain obligated, pursuant to the Rules, to pay such its Funds-Only Settlement Amount that is a debit by the payment deadline and shall do so by causing such payment to be made to the depository institution designated by the Corporation from time to time to receive such payment.

(k)(n) If the Funds-Only Settling Bank's account at the FRB has insufficient funds, ~~the Settlement Agent~~ **DTC** will receive notification from the FRB that the account was not debited. The affected Netting Member(s) must then promptly wire the requisite funds to the depository institution designated by the Corporation for this purpose by the payment deadline.

(l)(o) In the event a Funds-Only Settling Bank fails to settle in the manner and at the time prescribed by the Corporation, due to insolvency or other cause, each Netting Member represented by that Funds-Only Settling Bank shall be obligated to the Corporation for its Funds-Only Settlement Amount and such payment must be made by the payment deadline; however, if the Corporation has made payment to the failed Funds-Only Settling Bank the Corporation shall have no obligation to any Netting Member for a Funds-Only Settlement Amount that is a credit.

~~(m)~~**(p)** The Netting Member must remain at all times in compliance with the Rules, notwithstanding any circumstances related to its Funds-Only Settling Bank or NSS. Netting Members must at all times be prepared to wire payment to the depository institution designated by the Corporation for this purpose if its Funds-Only Settlement Amount is not satisfied via the NSS process. If the Corporation does not receive a Netting Member's Funds-Only Settlement Amount that is a debit by the payment deadline, the Member shall be subject to the applicable fine and any other disciplinary consequences under these Rules.

~~(n)~~**(q)** Each Funds-Only Settling Bank shall monitor its FRB account to ensure accuracy of debits and credits made through the NSS process.

~~(o)~~**(r)** Under FRB Operating Circular No. 12, FICC's Settlement Agent has certain processing responsibilities in allocating an indemnity claim made by an FRB as a result of processing the Corporation's funds-only settlement via NSS. The Corporation shall apportion the entirety of such liability to the Netting Members for whom the Funds-Only Settling Bank to which the indemnity claim relates was acting. Such liability for each applicable Netting Member shall be in proportion to the amount of such Members' Funds-Only Settlement Amounts on the Business Day in question. If for any reason such allocation is not sufficient to fully satisfy the FRB indemnity claim, then the remaining loss shall be treated as a loss that is otherwise incident to the clearance and settlement business of the Corporation and allocated accordingly pursuant to Section 7 of Rule 4.

~~(p)~~**(s)** No improper or unauthorized action, or failure to act, by a Funds-Only Settling Bank or other depository institution on behalf of a Netting Member shall excuse or otherwise affect such Netting Member's obligations to the Corporation pursuant to this Rule.

Section 6 – Acknowledgement and Payment Deadlines for Funds-Only Settlement Amounts

(a) The acknowledgement required to be made by the Funds-Only Settling Banks regarding their Net Funds-Only Settlement Figures pursuant to Section 5 of this Rule shall be ~~announced by the Corporation in its notice~~ **made by the Acknowledgement Cutoff Time subject to Section 5(l) of this Rule.**

* * *

FIXED INCOME CLEARING CORPORATION
MORTGAGE-BACKED SECURITIES DIVISION
CLEARING RULES

RULE 1 – DEFINITIONS*

Unless the context requires otherwise, the terms defined in this Rule shall, for all purposes of these Rules, have the meanings herein specified.

Account

The term “Account” means any account maintained by the Corporation on behalf of a Clearing Member. An Account maintained for a Member acting as a Dealer is referred to as a “Dealer Account,” and an Account maintained for a Member acting as a Broker is referred to as a “Broker Account.”

Acknowledgement Cutoff Time

The term “Acknowledgement Cutoff Time” shall have the meaning given to that term in Section 9(b) of Rule 11.

Actual Deposit

The term “Actual Deposit” shall have the meaning given that term in Section 4 of Rule 4.

* * *

RULE 11 – CASH SETTLEMENT

* * *

Section 9- Cash Settlement

At such time and in such manner as is specified by the Corporation from time to time, any Member with a net negative Cash Balance for any Aggregated Account shall pay to the Corporation the amount of such negative Cash Balance, and the Corporation shall pay to any Member with a positive Cash Balance for any Aggregated Account the amount of such positive Cash Balance. The payments referred to in the previous sentence shall be done through the Cash Settling Banks pursuant to the following process:

(a) At such time and in such manner as specified by the Corporation from time to time, the Corporation shall make available to each Member and to the Cash Settling Bank Member acting on behalf of the Member a Report stating the Cash Settlement amount that is either to be paid from such Member to the Corporation on the scheduled due date for the payment of debits or to be collected by such Member on the scheduled due date for the payment of credits. The Cash Settling Bank Member shall also receive the Cash Settlement amounts of all of the Members for which it is acting, its Total Debit Cash Balance Figure and its Total Credit Cash Balance Figure.

(b) ~~By the deadline established by the Corporation as announced in notices issued by the Corporation~~By the Acknowledgement Cutoff Time, the Cash Settling Banks, without exception, must acknowledge to the Corporation via the designated terminal system their Total Debit Cash Balance Figures and Total Credit Cash Balance Figures and (1) their intention to settle with the Corporation such Figures ~~by the applicable deadlines~~, or (2) their refusal to settle for one or more particular Members. The Acknowledgement Cutoff Time shall be the later of: (i) 30 minutes after the Cash Settling Bank has been notified that such payment is due, or (ii) 30 minutes prior to the payment deadlines established by the Corporation. Notwithstanding the foregoing, a Cash Settling Bank that is a Member and settles solely for its own account may opt to not acknowledge its Cash Settlement amount; if such Cash Settling Bank chooses to opt out, it shall not be subject to subsections (k) and (l) below.

(c) If the Cash Settling Bank sends refusal messages which result in a revised Total Debit Cash Balance Figure and/or Total Credit Cash Balance Figure, it must send a message to the ~~Settlement Agent~~Corporation immediately after the refusal message acknowledging the new amount(s) and its intention to settle the new Total Debit Cash Balance Figure and/or Total Credit Cash Balance Figure by the payment deadline. This new Total Debit Cash Balance Figure and/or Total Credit Cash Balance Figure shall be subject to subsection (k) below.

~~(d) — A Cash Settling Bank that cannot send an acknowledgement or refusal message to the Corporation due to an operational issue may telephone its instructions to Corporation's Operations area to the number specified in the Corporation's notices.~~

~~(e)~~(d) A refusal to settle by the Cash Settling Bank for a particular Member is a refusal to settle all accounts of the Member for which the Cash Settling Bank is acting. The Cash Settling Bank cannot refuse to settle only some of the accounts of the Member if the Member has multiple accounts at the Corporation for which the Cash Settling Bank is acting.

~~(f)~~(e) If the Cash Settling Bank does not acknowledge, or sends a refusal regarding, the Member's Cash Settlement amount that is a debit or if the Bank acknowledges the amount but then does not settle the payment, the Member shall remain obligated, pursuant to the Rules, to pay such Cash Settlement amount by the payment deadline and shall do so by causing such payment to be made to the depository institution designated by the Corporation from time to time to receive such payment.

~~(g)~~(f) A Cash Settling Bank with a Total Debit Cash Balance Figure that has sent an acknowledgement to the Corporation must settle such amount pursuant to the process set forth herein by the payment deadline established by the Corporation on the Corporation's time schedules posted on its website.

~~(h)~~(g) DTC provides the Corporation with services with respect to the Corporation's Cash Settlement process as described herein and in accordance with the Rules. DTC will act as Settlement Agent (as that term is used in the relevant FRB's Operating Circular 12 and in these Rules) for the Corporation and for the Corporation's Cash Settling Banks with respect to the FRB's NSS, as the means of effecting Cash Settlement.

(h) A Cash Settling Bank that cannot send an acknowledgement or refusal message to the Corporation due to an operational issue may telephone its instructions to the Settlement Agent.

(i) The Settlement Agent uses the most recent contact information provided by the Cash Settling Bank to the Settlement Agent. Each Cash Settling Bank must ensure that it maintains up-to-date and accurate contact details with the Settlement Agent on an ongoing basis when previously provided contact details are no longer accurate, to facilitate the Settlement Agent's ability to contact a Cash Settling Bank regarding settlement issues.

~~(j)~~(i) Cash Settling Banks must settle their Total Debit Cash Balance Figures and their Total Credit Cash Balance Figures via the FRB's NSS. The Settlement Agent will send a pre-advice to each Cash Settling Bank, notifying it that the Settlement Agent is about to send its NSS transmission to the FRB. NSS will allow the Corporation's Settlement Agent to instruct the relevant FRB to debit or credit, as applicable, the Cash Settling Bank's account at the FRB by the requisite amount.

(k) If a Cash Settling Bank does not, by the Acknowledgement Cutoff Time, either: (i) affirmatively acknowledge its Total Debit Cash Balance Figure and Total Credit Cash Balance Figure or (ii) notify the Settlement Agent that it refuses to settle for one or more Members for which it is the designated Cash Settling Bank, then, at the Acknowledgement Cutoff Time, the Cash Settling Bank is deemed to have acknowledged its Total Debit Cash Balance Figure and Total Credit Cash Balance Figure. If the amount is a Total Debit Cash Balance Figure, then the Cash Settling Bank's FRB account will be charged; if the amount is a Total Credit Cash Balance Figure, then the Cash Settling Bank's FRB account will be credited. This subsection (k) does not apply to a Cash Settling Bank that settles solely for its own account and opts not to acknowledge its Total Debit Cash Balance Figure and/or Total Credit Cash Balance Figure.

(l) The Settlement Agent will attempt to contact the Cash Settling Bank if no acknowledgement or notice of a refusal to settle on behalf of one or more Members for which it is designated as the Cash Settling Bank is received by the Acknowledgement Cutoff Time. If (x) the Settlement Agent is able to contact the Cash Settling Bank, and (y) the Cash Settling Bank notifies the Settlement Agent that it cannot, at that time, acknowledge or refuse its Total Debit Cash Balance Figure and Total Credit Cash Balance Figure, then the Cash Settling Bank will not be deemed to have acknowledged its Total Debit Cash Balance Figure and Total Credit Cash Balance Figure. If the Cash Settling Bank cannot be reached, the Cash Settling Bank will be deemed to have acknowledged its Total Debit Cash Balance Figure and Total Credit Cash Balance Figure.

The Corporation may exclude a Cash Settling Bank's balance from the NSS file if the Cash Settling Bank (i) does not acknowledge its Total Debit Cash Balance Figure and/or Total Credit Cash Balance Figure by the Acknowledgement Cutoff Time, or does not acknowledge its new Total Debit Cash Balance Figure and/or Total Credit Cash Balance Figure pursuant to subsection (c) above by the Acknowledgement Cutoff Time; and (ii) is not deemed to have acknowledged its Total Debit Cash Balance Figure and/or Total Credit Cash Balance Figure or new Total Debit Cash Balance Figure and/or Total Credit Cash Balance Figure pursuant to subsection (c) above because it has notified Settlement Agent that it is unable to affirmatively acknowledge its Total Debit Cash Balance Figure and/or Total Credit Cash Balance Figure or refuses to settle on behalf of a Member.

This subsection (l) does not apply to a Cash Settling Bank that settles solely for its own account and opts to not acknowledge its Total Debit Cash Figure and/or Total Credit Cash Balance Figure.

~~(j)(m)~~ If a Cash Settling Bank is experiencing extenuating circumstances and, as a result, needs to opt out of NSS for one Business Day, the Cash Settling Bank must notify the ~~Corporation's Operations area Settlement Agent~~ prior to the Acknowledgement Cutoff Time~~acknowledgement deadline~~. The Member shall remain obligated, pursuant to the Rules, to pay its Cash Settlement amount that is a debit by the payment deadline and shall do so by causing such payment to be made to the depository institution designated by the Corporation from time to time to receive such payment.

~~(k)(n)~~ If the Cash Settling Bank's account at the FRB has insufficient funds, the Settlement Agent~~DTC~~ will receive notification from the FRB that the account was not debited. The affected Member(s) must then promptly wire the requisite funds to the depository institution designated by the Corporation for this purpose by the payment deadline.

~~(l)(o)~~ In the event a Cash Settling Bank fails to settle in the manner and at the time prescribed by the Corporation, due to insolvency or other cause, each Member represented by that Cash Settling Bank shall be obligated to the Corporation for its Cash Settlement amount and such payment must be made by the payment deadline; however, if the Corporation has made payment to the failed Cash Settling Bank the Corporation shall have no obligation to any Member for a Cash Settlement amount that is a credit.

~~(m)~~(p) Members must remain at all times in compliance with the Rules, notwithstanding any circumstances related to their Cash Settling Bank or NSS. A Member must at all times be prepared to wire payment to the depository institution designated by the Corporation for this purpose if the Member's Cash Settlement amount is not satisfied via the NSS process. If the Corporation does not receive a Member's Cash Settlement amount that is a debit by the payment deadline, the Member shall be subject to the applicable fine and any other disciplinary consequences under these Rules.

~~(n)~~(q) Each Cash Settling Bank shall monitor its FRB account to ensure accuracy of debits and credits made through the NSS process.

~~(o)~~(r) Under FRB Operating Circular No. 12, FICC's Settlement Agent has certain processing responsibilities in allocating an indemnity claim made by an FRB as a result of processing the Corporation's cash settlement via NSS. The Corporation shall apportion the entirety of such liability to the Member or Members for whom the Cash Settling Bank to which the indemnity claim relates was acting. Such liability for each applicable Member shall be in proportion to the amount of such Members' Cash Settlement amounts on the Business Day in question. If for any reason such allocation is not sufficient to fully satisfy the FRB indemnity claim, then the remaining loss shall be treated as a loss that is otherwise incident to the clearance and settlement business of the Corporation and allocated accordingly pursuant to Section 7 of Rule 4.

~~(p)~~(s) No improper or unauthorized action, or failure to act, by a Cash Settling Bank or on behalf of a Member shall excuse or otherwise affect such Member's obligations to the Corporation pursuant to this Rule.

* * *