

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90386; File No. SR-FICC-2020-013)

November 10, 2020

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Government Securities Division Rulebook to Add a Pre-payment Assessment and Certain Credits in Connection with a New Service, Which Has Not Yet Been Proposed for and Would Be Subject to Regulatory Approval

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 October 28, 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. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of modifications to the FICC Government Securities Division (“GSD”) Rulebook (“Rules”)⁵ in order to add a \$250,000 pre-payment assessment (the “Sponsored GC Pre-Payment Assessment”) in connection with

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

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

a new service offering, which has not yet been proposed for and would be subject to regulatory approval, that would allow Sponsoring Members to transact cleared tri-party Repo Transactions with their Sponsored Members on a general collateral basis (the “Sponsored GC Service”). The proposal would include certain credits in connection with the Sponsored GC Pre-Payment Assessment, as further described below.

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 the proposed rule change is to amend the Rules to add the Sponsored GC Pre-Payment Assessment in connection with the Sponsored GC Service. The proposal would include certain credits in connection with the Sponsored GC Pre-Payment Assessment, as further described below.

Proposal

FICC is proposing to add the Sponsored GC Pre-Payment Assessment to the Rules to ensure Sponsoring Members’ support of and readiness to participate in the Sponsored GC Service in order to justify FICC’s investment in building the new technology infrastructure that would be necessary to implement the Sponsored GC

Service, and also to ensure equitable treatment of Sponsoring Members irrespective of when they elect to onboard into the Sponsored GC Service. It is important to note that FICC's proposed use of the Sponsored GC Pre-Payment Assessment relates to the Sponsored GC Service being a new service for FICC, which as described above requires an investment by FICC in new technology infrastructure. As such, FICC does not anticipate using similar payment mechanisms for its existing services.

As described in detail below, satisfaction of the Sponsored GC Pre-Payment Assessment would be required at or before the time a Sponsoring Member onboards into the Sponsored GC Service. Because a Sponsoring Member would be required to obtain appropriate internal approvals prior to satisfying the Sponsored GC Pre-Payment Assessment, FICC believes that the Sponsored GC Pre-Payment Assessment would ensure that the Sponsoring Member is supportive of and ready to utilize the Sponsored GC Service, and would similarly reduce the likelihood that the Sponsoring Member later withdraws from the Sponsored GC Service.

The Sponsored GC Service, which as described above has not yet been proposed for and would be subject to regulatory approval, would be a voluntary service offering, which would allow (but not require) Sponsoring Members and their Sponsored Members to transact cleared tri-party Repo Transactions on a general collateral basis.

Any Sponsoring Member that chooses to participate in the Sponsored GC Service would be charged the Sponsored GC Pre-Payment Assessment at the time such Sponsoring Member onboards into the Sponsored GC Service. The Sponsored GC Pre-Payment Assessment would be credited against the Sponsoring Member's use of the Sponsored GC Service such that the Sponsoring Member would not make any payment to

FICC for its use of the Sponsored GC Service until after the Sponsored GC Pre-Payment Assessment is completely depleted.

In addition, any Sponsoring Member that elects to be charged the Sponsored GC Pre-Payment Assessment between November 2020 and February 2021 would receive an additional \$25,000 credit toward its use of the Sponsored GC Service (the “Additional Sponsored GC Credit”) such that FICC’s books and records would reflect that such Sponsoring Member has a total of \$275,000 of credit towards its use of the Sponsored GC Service.⁶

In light of current market conditions depressing cleared repo volumes generally, FICC believes that requiring the Sponsored GC Pre-Payment Assessment is necessary for FICC to be assured that Sponsoring Members are supportive of the Sponsored GC Service and also ready to utilize it in order to justify FICC’s investment in the new technology infrastructure that would be necessary to implement the Sponsored GC Service. The \$250,000 amount for the Sponsored GC Pre-Payment Assessment was selected as a result of dialogue between FICC and its Sponsoring Members. FICC believes this amount represents a sufficiently substantial outlay of funds by the Sponsoring Member to require it to obtain the appropriate internal approvals in order for the Sponsoring Member to satisfy such amount, and thereby ensures the Sponsoring Member’s support of and readiness to utilize the Sponsored GC Service. In addition, although the amount was not specifically selected to ensure total coverage of the cost of the new technology infrastructure required in order for FICC to implement the Sponsored

⁶ The Sponsored GC Service would be priced using the existing delivery-versus-payment (“DVP”) service fees for transaction processing, and intraday and end-of-day position management. See Fee Structure, supra note 5.

GC Service, FICC believes that the \$250,000 amount for the Sponsored GC Pre-Payment Assessment would ensure coverage of a reasonable amount of FICC's costs associated with implementing the Sponsored GC Service.

Similarly, the \$25,000 amount for the Additional Sponsored GC Credit was chosen by FICC to reflect reasonable compensation for Sponsoring Members who elect to be charged the Sponsoring GC Pre-Payment Assessment at least several months prior to implementation of the Sponsored GC Service (i.e., between November 2020 and February 2021).

Sponsoring Members that elect to participate in the Sponsored GC Service would have 36 months after their onboarding into the Sponsored GC Service to deplete their Sponsored GC Assessment and Additional Sponsored GC Credit, if applicable, before the credits would expire.

To the extent that FICC, in consultation with its Board of Directors, decides at a later date, for any reason, not to implement the Sponsored GC Service, all previously collected Sponsored GC Pre-Payment Assessments would be returned to the contributing Sponsoring Members in full at such time.

In addition, if a Sponsoring Member elects to withdraw from the Sponsored GC Service before expiration of its Sponsored GC Pre-payment Assessment, it would be entitled to a return of any unused portion of its Sponsored GC Pre-payment Assessment from FICC. However, to the extent such Sponsoring Member should ever elect to participate in the Sponsored GC Service at a later time, it would be obligated to pay the entire Sponsored GC Pre-Payment Assessment again at such time.

Proposed Rule Changes

In order to effectuate the proposal described above, FICC would amend Rule 1 (Definitions) to add two new definitions, “Sponsored GC Pre-Payment Assessment” and “Sponsored GC Service.”

The “Sponsored GC Pre-Payment Assessment” would be defined as a \$250,000 assessment that shall be charged to a Sponsoring Member at the time the Sponsoring Member onboards into the Sponsored GC Service. Such assessment shall be credited by the Corporation against the Sponsoring Member’s fees for use of the Sponsored GC Service until the earlier of (i) the assessment being completely depleted and (ii) thirty-six (36) months after the Sponsoring Member onboards into the Sponsored GC Service.

The “Sponsored GC Service” would be defined as the service to be offered by FICC, which has not yet been proposed for and would be subject to regulatory approval, to clear tri-party repurchase agreement transactions between Sponsoring Members and Sponsored Members, as shall be described in Rule 3A. FICC would also add a footnote to this proposed definition stating that the Sponsored GC Service shall be the subject of a subsequent rule filing with the Commission, and the proposed definition shall be revised upon approval of the subsequent rule filing, and the footnote shall sunset at that time.

In addition, FICC would amend Section VII (Sponsoring Members) of the Fee Structure to provide that a Sponsoring Member shall also be liable to FICC for the Sponsored GC Pre-Payment Assessment to the extent it participates in the Sponsored GC Service, and that FICC’s books and records shall reflect the Sponsored GC Pre-Payment Assessment as a credit to such Sponsoring Member until expiration.

Moreover, FICC would amend Section VII of the Fee Structure to provide that any Sponsoring Member that elects to be charged the Sponsored GC Pre-Payment Assessment between November 2020 and February 2021 shall receive the Additional Sponsored GC Credit, which shall be credited by FICC against the Sponsoring Member's fees for use of the Sponsored GC Service until the earlier of (i) the Additional Sponsored GC Assessment being completely depleted and (ii) thirty-six (36) months after the Sponsoring Member onboards into the Sponsored GC Service, and that FICC's books and records shall reflect the Additional Sponsored GC Credit as a credit to such Sponsoring Member until expiration.

Furthermore, FICC would amend Section VII of the Fee Structure to provide that to the extent FICC, in consultation with its Board of Directors, does not implement the Sponsored GC Service, all previously collected Sponsored GC Pre-Payment Assessments shall be returned to the contributing Sponsoring Members in full. FICC would also add a footnote stating that the Sponsored GC Service shall be the subject of a subsequent rule filing with the Commission, and the referenced sentence shall be removed upon approval of the subsequent rule filing, and the footnote shall sunset at that time.

Additionally, FICC would amend Section VII of the Fee Structure to provide that to the extent a Sponsoring Member elects to withdraw from the Sponsored GC Service prior to the expiration of its Sponsored GC Pre-Payment Assessment, it shall be entitled to a return of any unused portion of such Sponsored GC Pre-Payment Assessment from FICC; provided that, for the avoidance of doubt, such Sponsoring Member shall be liable for the Sponsored GC Pre-Payment Assessment to the extent that it ever elects to participate in the Sponsored GC Service in the future.

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. FICC believes this proposal is consistent with Section 17A(b)(3)(D) of the Act,⁷ for the reasons described below.

Section 17A(b)(3)(D) of the Act requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.⁸ FICC believes the proposed rule changes to add the Sponsored GC Pre-Payment Assessment and to provide for certain credits as described above would provide for the equitable allocation of reasonable charges.

FICC believes the proposed rule changes are equitable because the Sponsored GC Pre-Payment Assessment would represent for every Sponsoring Member that elects to participate in the Sponsored GC Service a sufficiently substantial outlay of funds to require it to obtain appropriate internal approvals in order to satisfy it, thereby ensuring such Sponsoring Member's support of and readiness to utilize the Sponsored GC Service.

In addition, FICC believes the proposed rule changes are equitable because the Sponsored GC Pre-Payment Assessment would apply uniformly to all Sponsoring Members that choose to use the Sponsored GC Service, regardless of when the Sponsoring Member elects to onboard into this service, and every Sponsoring Member would have the same amount of time, i.e., 36 months from their firm's onboarding into the Sponsored GC Service, to deplete their Sponsored GC Pre-Payment Assessment and

⁷ 15 U.S.C. 78q-1(b)(3)(D).

⁸ Id.

Additional Sponsored GC Credit, if applicable, before the credits would expire. Based on volume estimates provided by Sponsoring Members that have expressed interest in participating in the Sponsored GC Service, FICC believes that 36 months represents ample time for every Sponsoring Member to utilize the Sponsored GC Pre-Payment Assessment and Additional Sponsored GC Credit, if applicable, before the credits would expire.

Moreover, FICC believes the proposed Additional Sponsored GC Credit is reasonable as between the Sponsoring Members that would elect to be charged the Sponsored GC Pre-Payment Assessment during the period from November 2020 to February 2021, and those Sponsoring Members that would not, because the former Sponsoring Members would be contributing their capital to FICC at least several months prior to the implementation of the Sponsored GC Service, and therefore, would not have use of that capital during that time period. In consideration of this early contribution of capital, FICC believes it would be reasonable for such Sponsoring Members to receive the Additional Sponsored GC Credit, and for those Sponsoring Members that elect to hold onto their capital and not pay their Sponsored GC Pre-Payment Assessments until the time they onboard into the Sponsored GC Service after its implementation, not to receive the Additional Sponsored GC Credit.

Furthermore, FICC believes the Sponsored GC Pre-Payment Assessment would represent a reasonable charge to assess on the Sponsoring Members that elect to participate in the Sponsored GC Service because, as described above, the Sponsored GC Pre-Payment Assessment would be credited against a Sponsoring Member's use of the Sponsored GC Service such that the Sponsoring Member would not make any payment to

FICC for its use of the Sponsored GC Service until after the Sponsored GC Pre-Payment Assessment is completely depleted or has expired. In addition, as described above, to the extent a Sponsoring Member elects to withdraw from the Sponsored GC Service prior to the expiration of its Sponsored GC Pre-Payment Assessment, FICC would be obligated to return any unused portion of such Sponsored GC Pre-Payment Assessment to the Sponsoring Member. However, to the extent such Sponsoring Member should ever elect to participate in the Sponsored GC Service at a later time, it would be obligated to pay again the Sponsored GC Pre-Payment Assessment at such time.

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

FICC does not believe that the proposed rule change would have any impact, or impose any burden, on competition. First, as described above, participation in the proposed Sponsored GC Service would be entirely voluntary on the part of Sponsoring Members, and those Sponsoring Members who elect not to participate in the Sponsored GC Service would not be required to satisfy the Sponsored GC Pre-Payment Assessment. In addition, the Sponsored GC Pre-Payment Assessment would not have any impact, or impose any burden, on competition because, as described above, it would be applied uniformly to all Sponsoring Members who elect to participate in the Sponsored GC Service regardless of when the Sponsoring Member elects to onboard into the Sponsored GC Service, and every Sponsoring Member would have the same amount of time, i.e., 36 months from their firm's onboarding into the proposed Sponsored GC Service, to deplete it. Moreover, applying the Additional Sponsored GC Credit to Sponsoring Members who elect to be charged the Sponsored GC Pre-Payment Assessment between November 2020 and February 2021, and not applying the Additional Sponsored GC Credit to those

Sponsoring Members that do not elect to make such early contribution of capital, would not have any impact, or impose any burden, on competition because the former Sponsoring Members would have contributed their capital at least several months prior to the implementation of the Sponsored GC Service, and the latter Sponsoring Members would be able to hold onto their capital until the time they onboard into the Sponsored GC Service after its implementation.

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

FICC has not received or solicited any written comments relating to this proposal.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)⁹ of the Act and paragraph (f)¹⁰ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

⁹ 15 U.S.C 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f).

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-2020-013 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-2020-013. 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-2020-013 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.¹¹

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).