

OMB APPROVAL

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Page 1 of * 75	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2021 - * 004 Amendment No. (req. for Amendments *)
Filing by Fixed Income Clearing Corporation Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934		
Initial * <input checked="" type="checkbox"/> Amendment * <input type="checkbox"/> Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/> Section 19(b)(3)(A) * <input type="checkbox"/> Section 19(b)(3)(B) * <input type="checkbox"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires *		
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> Section 806(e)(2) * <input type="checkbox"/>		Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>	
Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div style="border: 1px solid black; padding: 5px; min-height: 40px;"> Relating to Confidential Information, Market Disruption Events, and Other Changes </div>		
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 * James Last Name * Nygard Title * Director and Assistant General Counsel E-mail * jnygard@dtcc.com Telephone * (813) 470-1898 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. <div style="text-align: right;">(Title *)</div> <div style="display: flex; justify-content: space-between;"> <div> Date 06/25/2021 By Nikki Poulos (Name *) </div> <div style="border: 1px solid black; padding: 5px; width: 60%;"> Managing Director and Deputy General Counsel </div> </div> <div style="text-align: center; margin-top: 10px;"> <div style="border: 1px solid black; padding: 2px 10px; background-color: #ccc;">npoulos@dtcc.com</div> </div> <p style="font-size: small;">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.</p>		

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The proposed rule change of Fixed Income Clearing Corporation (“FICC”) is annexed hereto as Exhibit 5 and consists of modifications to FICC’s Government Securities Division (“GSD”) Rulebook (the “GSD Rules”), Mortgage-Backed Securities Division (“MBSD”) Clearing Rules (the “MBSD Clearing Rules”) and MBSD EPN Rules (the “EPN Rules,” and collectively with the GSD Rules and the MBSD Clearing Rules, the “Rules”)¹ to (i) revise certain provisions in the Rules relating to the confidentiality of information furnished by applicants, Members and EPN Users (collectively, “participants”) to FICC, (ii) require that each participant maintain confidential information furnished by FICC or its affiliates in confidence and restrict use and disclosure of such information, (iii) add certain officers who are allowed to determine that there is a Market Disruption Event pursuant to GSD Rule 50 and MBSD Rule 40 and (iv) add a new GSD Rule 50A and MBSD Rule 40A to address situations in which it is necessary to disconnect a Member, EPN User, third party service provider, or service bureau due to an imminent threat of harm to FICC, Members, EPN Users and/or other market participants. Each of the proposed changes is described in greater detail below.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Risk Committee of the FICC Board of Directors (“Board of Directors”) on September 15, 2020.

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

(a) Purpose

The proposed rule change consists of modifications to (i) revise certain provisions in the Rules relating to the confidentiality of information furnished by participants to FICC, (ii) require that each participant maintain confidential information furnished by FICC or its affiliates in confidence and restrict use and disclosure of such information, (iii) add certain officers who are allowed to determine that there is a Market Disruption Event pursuant to GSD Rule 50 and MBSD Rule 40 and (iv) add a new GSD Rule 50A and MBSD Rule 40A to address situations in which it is necessary to disconnect a Member, EPN User, third party service provider, or service bureau due to an imminent threat of harm to FICC, Members, EPN Users and/or other market participants. Each of the proposed changes is described in greater detail below.

¹ Capitalized terms not defined herein are defined in the GSD Rules, MBSD Clearing Rules or the EPN Rules, as applicable, available at <https://www.dtcc.com/legal/rules-and-procedures>.

(i) FICC Confidentiality Requirements

Section 5 of GSD Rule 2A,² Section 4 of GSD Rule 3,³ Section 10 of GSD Rule 3,⁴ Section 2(j) of GSD Rule 3A,⁵ Section 3(e) of GSD Rule 3B,⁶ Section 5(k) of GSD Rule 3B,⁷ Section 6 of MBSD Rule 2A,⁸ Section 3 of MBSD Rule 3,⁹ Section 9 of MBSD Rule 3¹⁰ and Section 9 of EPN Rule 1 of Article III of the EPN Rules¹¹ each contain provisions relating to

² Section 5 of GSD Rule 2A, supra note 1. GSD Rule 2A relates to initial membership requirements including information that FICC may require applicants to furnish to become Members of FICC.

³ Section 4 of GSD Rule 3, supra note 1. GSD Rule 3 relates to ongoing membership requirements including information that FICC may require Members to furnish to FICC to continue membership at FICC.

⁴ Section 10 of GSD Rule 3, supra note 1. Section 10 of GSD Rule 3 states that the books and records of Members, and in the case of a Registered Investment Company Netting Member, their Controlling Management, shall be open to inspection and that FICC shall be furnished certain information.

⁵ Section 2(j) of GSD Rule 3A, supra note 1. GSD Rule 3A relates to the rights, liabilities and obligations of Sponsoring Members and Sponsored Members including information that FICC may require Sponsoring Members, Sponsored Members and applicants to become Sponsoring Members or Sponsored Members, to furnish to FICC.

⁶ Section 3(e) of GSD Rule 3B, supra note 1. GSD Rule 3B relates to the rights, liabilities and obligations of CCIT Members including information that FICC may require CCIT Members and applicants to become CCIT Members to furnish to FICC.

⁷ Section 5(k) of GSD Rule 3B, supra note 1. Section 5(k) of GSD Rule 3B states that the books and records of CCIT Members, and their Controlling Management, shall be open to inspection and that FICC shall be furnished certain information.

⁸ Section 6 of MBSD Rule 2A, supra note 1. MBSD Rule 2A relates to initial membership requirements including information that FICC may require applicants to furnish to become Clearing Members of FICC.

⁹ Section 3 of MBSD Rule 3, supra note 1. MBSD Rule 3 relates to ongoing membership requirements including information that FICC may require Members to furnish to FICC to continue membership in FICC.

¹⁰ Section 9 of MBSD Rule 3, supra note 1. Section 9 of MBSD Rule 3 states that the books and records of Members shall be open to inspection and that FICC shall be furnished certain information.

¹¹ Section 9 of EPN Rule 1 of Article III of the EPN Rules, supra note 1. Rule 1 of Article III of the EPN Rules relates to initial and ongoing requirements to become and continue

confidentiality of information furnished by participants to FICC (collectively, the “FICC Confidentiality Requirements”). Each of the FICC Confidentiality Requirements provides that either (a) such furnished information will be held by FICC in the same degree of confidence as may be required by law or the rules and regulations of the appropriate regulatory body having jurisdiction over the participant or (b) the rights of FICC to inspect books and records or receive information is subject to any applicable laws or rules or regulations of regulatory bodies having jurisdiction over the participant that relate to confidentiality of records. FICC is proposing to update the FICC Confidentiality Requirements because such provisions (i) may result in unequal treatment of participants due to differing laws or regulations of regulatory bodies, (ii) may result in a potential conflict of laws where rules or regulations governing a regulatory body of a participant differ from the laws applicable to FICC, or a participant has multiple regulatory bodies whose rules conflict, (iii) are burdensome as they require FICC to track the rules and regulations of each regulatory body of its participants, and ensure that information provided by participants to FICC is held in confidence to the same degree as it is held by such regulatory bodies, or to determine what applicable laws or rules or regulations of regulatory bodies that relate to confidentiality of records affect FICC’s rights to receive information and (iv) are unnecessary as FICC has sufficient protections in place relating to protection and confidentiality of participant data.

The regulatory bodies that have jurisdiction over participants differ by participant depending on certain criteria of each participant, including the type of entity of the participant, where the participant was organized, the types of businesses in which the participant engages and where the participant is doing business. In addition, many participants are regulated by more than one regulatory body. As a result, a requirement to maintain confidentiality standards for information provided by a participant or the right to receive information based on the regulatory body or bodies that regulate such participant result in varying standards of confidentiality for participants that are regulated by different regulatory bodies. Such varying standards may result in unequal treatment of participants due to differing laws or regulations of the regulatory body or bodies governing such participants. In addition, such varying standards may result in a potential conflict of laws where rules or regulations governing a regulatory body of a participant differ from the laws applicable to FICC or an entity that has multiple regulatory bodies whose rules conflict.

FICC believes that it is unnecessarily burdensome to determine the rules and regulations of each of the regulatory bodies that regulate its participants. Such regulatory bodies include numerous U.S. federal and state regulators as well as foreign national, state and local regulators. FICC proposes revising the language in the FICC Confidentiality Requirements to maintain one confidentiality standard for all participants rather than maintaining potentially different confidentiality standards for participants based on the various, unrelated regulatory bodies regulating such participants. FICC is proposing to replace the existing language in the FICC Confidentiality Requirements with language that would provide that FICC will hold non-public information furnished pursuant to those Rules in confidence as may be required under the law or the rules and regulations applicable to FICC that relate to the confidentiality of records. Such

to be an EPN User including information that FICC may require applicants or EPN Users to provide to FICC.

laws, rules and regulations would include national, state and foreign laws governing confidentiality of data that are applicable to FICC in connection with its collection and disclosure of data.

FICC believes that the rules and regulations applicable to FICC governing the use and disclosure of confidential information provide standards that are representative of those of the various regulatory bodies governing its participants. As a result, FICC does not believe that the proposed rule change relating to the FICC Confidentiality Requirements would result in any change to FICC's practices relating to data protection and confidentiality of information provided by participants.

(ii) Participant Confidentiality Requirements

Historically, FICC has generally not provided, nor been requested to provide, information that contains confidential or proprietary information of FICC or its affiliates to its participants except for information necessary for participants and their service providers and service bureaus to connect to FICC and to participate in the services that FICC offers to its participants. While certain information is protected by intellectual property rights of FICC and its affiliates under applicable intellectual property laws, such as copyright laws and trademark laws, the Rules do not include any express obligations for participants to protect confidential information received by them from FICC or its affiliates.

In connection with the development of cyber and information security programs pursuant to applicable regulatory requirements by participants, FICC and its parent company, The Depository Trust & Clearing Corporation ("DTCC"), have received an increasing number of requests from participants for confidential and proprietary information of FICC and DTCC.¹² This includes, for example, information regarding DTCC's network operations and data security practices, legal settlements, and other information. Additionally, in the event there is a cyber incident relating to a participant, FICC or DTCC may be requested to disclose confidential information regarding its cyber threat indicators, sources of cyber threat information, or other information and actions taken related to a cyber event.

In order to provide for contractual protections for such confidential information of DTCC, FICC and DTCC's other subsidiaries, FICC is proposing to add provisions to the Rules that would require participants to maintain confidential information of FICC and its affiliates that FICC provides to such participants in confidence and not to disclose such confidential information except as necessary to perform such participant's obligations under FICC's Rules or as otherwise required by applicable law ("Participant Confidentiality Requirements"). The Participant Confidentiality Requirements would provide that in the event of a breach of the

¹² DTCC provides a set of core business processes for FICC and DTCC's other subsidiaries, including the technology systems and networks that provide connectivity between FICC and its participants and that provide the ability of FICC to provide the services as required under its Rules. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides relevant services to FICC and DTCC's other subsidiaries.

Participant Confidentiality Requirements, FICC or DTCC would be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages under the Rules. In addition, as with any failure to comply with its Rules, FICC would have the ability to impose other disciplinary proceedings or restrictions on access to services as provided in the Rules for failure to comply with the Participant Confidentiality Requirements.

(iii) Market Disruption Events

GSD Rule 50 and MBSD Rule 40 (Market Disruption and Force Majeure)¹³ (the “Force Majeure Rule”) contain provisions that identify the events or circumstances that would be considered a Market Disruption Event, including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which FICC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems.¹⁴ The Force Majeure Rule set forth in MBSD Rule 40 is also incorporated into the EPN Rules, and EPN Users are treated as Members for purposes of the EPN Rules, and references to “Rules” and “Procedures” are treated as references to EPN Rules for purposes of the EPN Rules.¹⁵ Under the Force Majeure Rule, during the pendency of a Market Disruption Event, FICC would be entitled to (i) suspend the provision of any or all services and (ii) take, or refrain from taking, or require Members to take, or refrain from taking, any actions FICC considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of FICC’s services as may be practicable.¹⁶

Section 2 of the Force Majeure Rule provides that the Board of Directors may determine the existence of a Market Disruption Event and the actions to be taken in response thereto.¹⁷ However, if the Board of Directors is unable to convene, the Force Majeure Rule provides that certain officers may make such determination, on an interim basis, which determination is then ratified, modified or rescinded as soon as practicable by the Board of Directors. The officers that may make such determination are all senior executive officers of FICC: Chief Executive Officer, Chief Financial Officer, Group Chief Risk Officer and General Counsel.

The proposed rule change would add two senior executive officers of FICC, the Chief Information Officer and the Head of Clearing Agency Services, to the list of officers that could make such determination if the Board of Directors is unable to convene. These two officers, like the other senior executive officers currently listed in the Rules, maintain senior executive level positions at FICC, oversee divisions of FICC, and hold positions at FICC that would provide them a necessary global view into FICC’s operations and systems to enable them to determine

¹³ GSD Rule 50 and MBSD Rule 40, supra note 1. The Force Majeure Rule is identical in the GSD Rules and the MBSD Rules.

¹⁴ Id.

¹⁵ See Section 5 of EPN Rule 1 of Article III of the EPN Rules, supra note 1.

¹⁶ Id.

¹⁷ Section 2 of GSD Rule 50 and Section 2 of MBSD Rule 40, supra note 1.

the existence of a Market Disruption Event in the event that the Board of Directors is unable to convene. Adding these two additional officers would facilitate FICC's ability to implement its emergency procedures in the event of a Market Disruption Event.

(iv) *Systems Disconnect: Threat of Significant Impact to FICC's Systems*

The proposed rule change would add a new GSD Rule 50A and an identical new MBSD Rule 40A (Systems Disconnect: Threat of Significant Impact to the Corporation's Systems) ("Systems Disconnect Rule") that would address situations in which FICC determines it is necessary for FICC to disconnect a single or limited number of Members, or third party service providers or service bureaus used by Members to connect to FICC¹⁸ (collectively, "DTCC Systems Participants") from FICC's systems or network due to an imminent threat of harm to FICC's or DTCC's systems. The imminent threat could be the result of a system disruption or cyber incident applicable to the DTCC Systems Participants. This would allow DTCC to work with the affected participants while protecting FICC, its systems and its other participants. Like the Force Majeure Rule set forth in MBSD Rule 40, the new MBSD Rule 40A would be incorporated into the EPN Rules, and EPN Users would be treated as Members, and references to "Rules" and "Procedures" would be treated as references to EPN Rules for purposes of the EPN Rules.

The proposed Systems Disconnect Rule would be structured similarly to the Force Majeure Rule. The Systems Disconnect Rule would address FICC's authority to take certain actions upon the occurrence, and during the pendency, of a Major Event. A "Major Event" would be defined as the happening of one or more "Systems Disruption(s)" (as defined below) that is reasonably likely to have a significant impact on FICC's operations, including the "DTCC Systems" (as defined below), that affect the business, operations, safeguarding of securities or funds, or physical functions of Members and/or other market participants. "Systems Disruption" would be defined as the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of a DTCC Systems Participant's systems that disrupts or degrades the normal operation of such DTCC Systems Participant's systems; or anything that impacts or alters the normal communication or the files that are received, or information transmitted, to or from the DTCC Systems. "DTCC Systems" would be defined as the systems, equipment and technology networks of DTCC, FICC and/or their Affiliates,¹⁹ whether owned, leased, or licensed, software, devices, IP addresses or other addresses or accounts used in connection with providing the services set forth in the Rules, or used to transact business or to manage the connection with FICC.

¹⁸ Some Members use third parties to connect to FICC's systems and/or to send data to FICC and receive data from FICC on the Member's or EPN User's behalf. Such third parties are referred to as "service providers" or "service bureaus" herein.

¹⁹ Affiliate is defined in GSD Rule 1 and MBSD Rule 1, as applicable, and is intended to cover DTCC and DTCC's other subsidiaries that use shared systems with FICC. GSD Rule 1 and MBSD Rule 1, supra note 1. See description of the shared systems of DTCC, FICC and DTCC's other subsidiaries, supra note 12.

The proposed Systems Disconnect Rule would allow FICC to mitigate the effect of such events by facilitating the continuity of services (or, if deemed necessary, the temporary suspension of services). To that end, under the proposed Systems Disconnect Rule, FICC would be entitled, during the pendency of a Major Event, to (1) disconnect a DTCC Systems Participant's systems from the DTCC Systems, (2) suspend the receipt and/or transmission of files or communications to or from the DTCC Systems Participant to the DTCC Systems and/or (3) take, or refrain from taking, or require a DTCC Systems Participant to take or refrain from taking, any actions that FICC considers appropriate to prevent, address, correct, mitigate or alleviate the Major Event and facilitate the continuation of services as may be practicable and, in that context, issue instructions to the DTCC Systems Participant.

The proposed Systems Disconnect Rule would define the governance procedures for how FICC would determine whether, and how, to implement the provisions of the rule. A determination that a Major Event has occurred could be made by the same officers with delegated authority under the Force Majeure Rule as discussed above (an "Officer Major Event Action"). Following this determination, any management committee on which all of the foregoing officers serve would convene, and FICC would convene a Board of Directors meeting as soon as practicable thereafter, and in any event within five Business Days following such determination, in each case, to ratify, modify, or rescind the Officer Major Event Action. The proposed Systems Disconnect Rule would require Members to notify FICC immediately upon becoming aware of a Major Event, and, likewise, would require FICC to promptly notify the DTCC Systems Participant(s) of any action FICC takes or intends to take with respect to such DTCC Systems Participant(s) pursuant to the proposed rule.

Finally, the Systems Disconnect Rule would address certain miscellaneous matters including: (i) a limitation of liability for any failure or delay in performance, in whole or in part of FICC's obligations under the Rules, arising out of or related to a Major Event, (ii) a statement that the power of FICC to take any action pursuant to the Systems Disconnect Rule also includes the power to repeal, rescind, revoke, amend or vary such action, (iii) a statement that the powers of FICC pursuant to the Systems Disconnect Rule shall be in addition to and not in derogation of, authority granted elsewhere in the Rules to take action as specified therein, (iv) a requirement that Members shall keep any DTCC Confidential Information (as defined below) provided to them by FICC and/or in connection with a Major Event confidential and (v) a statement that in the event of any conflict between the provisions of the Systems Disconnect Rule and any other Rules or Procedures, the provisions of the Systems Disconnect Rule would prevail.

(v) *Proposed Rule Changes*

The proposed rule change would amend the Rules to make the following changes to implement the changes discussed above:

FICC Confidentiality Requirements Changes

The proposed rule change would amend the FICC Confidentiality Requirements in Section 5 of GSD Rule 2A,²⁰ Section 4 of GSD Rule 3,²¹ Section 10 of GSD Rule 3,²² Section 2(j) of GSD Rule 3A,²³ Section 3(e) of GSD Rule 3B,²⁴ Section 5(k) of GSD Rule 3B,²⁵ Section 6 of MBSD Rule 2A,²⁶ Section 3 of MBSD Rule 3,²⁷ Section 9 of MBSD Rule 3²⁸ and Section 9 of EPN Rule 1 of Article III of the EPN Rules.²⁹ to state as follows:

[A]ny non-public information furnished to the Corporation pursuant to this Rule shall be held in confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records.

As discussed above, the proposed language is intended to provide one standard that FICC would apply uniformly to all participants, which assures participants that such information would be held in confidence with appropriate controls. FICC would add “non-public” when describing the information that is subject to the FICC Confidentiality Requirements to make it clear that such requirements would only apply to information that is not public. In addition, in Section 5 of GSD Rule 2A,³⁰ Section 4 of GSD Rule 3,³¹ Section 2(j) of GSD Rule 3A³² and Section 3(e) of GSD Rule 3B,³³ FICC would remove the phrase “Except as otherwise provided in Rule 29” or “Except as otherwise provided in Rule 29 (Clearing Data)” because the exception would no

²⁰ Section 5 of GSD Rule 2A, supra note 1.

²¹ Section 4 of GSD Rule 3, supra note 1.

²² Section 10 of GSD Rule 3, supra note 1.

²³ Section 2(j) of GSD Rule 3A, supra note 1.

²⁴ Section 3(e) of GSD Rule 3B, supra note 1.

²⁵ Section 5(k) of GSD Rule 3B, supra note 1.

²⁶ Section 6 of MBSD Rule 2A, supra note 1.

²⁷ Section 3 of MBSD Rule 3, supra note 1.

²⁸ Section 9 of MBSD Rule 3, supra note 1.

²⁹ Section 9 of EPN Rule 1 of Article III of the EPN Rules, supra note 1.

³⁰ Section 5 of GSD Rule 2A, supra note 1.

³¹ Section 4 of GSD Rule 3, supra note 1.

³² Section 2(j) of GSD Rule 3A, supra note 1.

³³ Section 3(e) of GSD Rule 3B, supra note 1.

longer be needed with the addition of the proposed language. GSD Rule 29³⁴ relates to the ability of FICC to release “Clearing Data” under certain circumstances. Because GSD Rule 29 would be a rule applicable to FICC, it would be covered by the proposed language which states that FICC would hold the information in confidence subject to rules applicable to it. FICC would remove a similar reference to MBSD Rule 22³⁵ in Section 6 of MBSD Rule 2A³⁶ and Section 3 of MBSD Rule 3³⁷ for the same reason. FICC would also amend a sentence in the Board Statements of Policy in the GSD Rules that references the FICC Confidentiality Requirements set forth in GSD Rule 3 to reflect the proposed updated language.

Certain Rules relating to FICC Confidentiality Requirements would also include language relating to Participant Confidentiality Requirements as described below.

Participant Confidentiality Requirements

In order to provide for Participant Confidentiality Requirements, FICC would add provisions in Section 5 of GSD Rule 2A,³⁸ Section 4 of GSD Rule 3,³⁹ Section 2(j) of GSD Rule 3A,⁴⁰ Section 3(e) of GSD Rule 3B,⁴¹ Section 6 of MBSD Rule 2A,⁴² Section 3 of MBSD Rule 3,⁴³ and Section 9 of EPN Rule 1 of Article III of the EPN Rules⁴⁴ to state that each participant shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform its obligations under the Rules or as otherwise required by applicable law. FICC would add a new definition of DTCC Confidential Information in GSD Rule 1 and MBSD Rule 1⁴⁵ to provide that “DTCC

³⁴ GSD Rule 29, supra note 1.

³⁵ MBSD Rule 22, supra note 1.

³⁶ Section 6 of MBSD Rule 2A, supra note 1.

³⁷ Section 3 of MBSD Rule 3, supra note 1.

³⁸ Section 5 of GSD Rule 2A, supra note 1.

³⁹ Section 4 of GSD Rule 3, supra note 1.

⁴⁰ Section 2(j) of GSD Rule 3A, supra note 1.

⁴¹ Section 3(e) of GSD Rule 3B, supra note 1.

⁴² Section 6 of MBSD Rule 2A, supra note 1.

⁴³ Section 3 of MBSD Rule 3, supra note 1.

⁴⁴ Section 9 of EPN Rule 1 of Article III of the EPN Rules, supra note 1.

⁴⁵ GSD Rule 1 and MBSD Rule 1, supra note 1.

Confidential Information” would mean all non-public information provided by DTCC and/or FICC that (i) is marked or otherwise identified in writing prior to disclosure to the recipient as confidential, (ii) is designated by DTCC or FICC as confidential, or (iii) the recipient knows or, under the circumstances surrounding disclosure, ought to reasonably know is confidential. FICC would also add a definition of DTCC in GSD Rule 1 and MBSD Rule 1, and remove a corresponding definition in GSD Rule 22D and MBSD Rule 17B⁴⁶ since it would be defined in GSD Rule 1 and MBSD Rule 1.

FICC would also add a statement in each provision relating to Participant Confidentiality Requirements that each participant acknowledges that a breach of its confidentiality obligations under the Rules may result in serious and irreparable harm to FICC and/or DTCC for which there is no adequate remedy at law. In the event of such a breach by the participant, FICC and/or DTCC would be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages.

Force Majeure Rule Officer Additions

The proposed rule change would add the Chief Information Officer and the Head of Clearing Agency Services to the list of officers that could make a determination of a Market Disruption Event if the Board of Directors is unable to convene in GSD Rule 50 and MBSD Rule 40.⁴⁷

Systems Disconnect Rule

The proposed rule change would add a new GSD Rule 50A and MBSD Rule 40A entitled “Systems Disconnect: Threat of Significant Impact to the Corporation’s Systems” that would address situations in which FICC determines it is necessary for FICC to disconnect a DTCC Systems Participant or DTCC Systems Participants from FICC’s systems or network due to an imminent threat of harm to FICC’s or DTCC’s systems consistent with the description above. The proposed Systems Disconnect Rule would include new definitions for “DTCC Systems,” “DTCC Systems Participant,” “Major Event” and “Systems Disruption” consistent with the descriptions of the Systems Disconnect Rule above.

References to the new GSD Rule 50A would be added to GSD Rule 3A, Section 17(b),⁴⁸ GSD Rule 3B, Section 17(a)⁴⁹ and GSD Rule 13, Section 4(m),⁵⁰ in each case, to reflect that the new GSD Rule 50A would apply to Sponsored Members and Sponsoring Members, CCIT Members and Funds-Only Settling Bank Members, respectively, in the same manner as other

⁴⁶ GSD Rule 22D and MBSD Rule 17B, supra note 1.

⁴⁷ GSD Rule 50 and MBSD Rule 40, supra note 1.

⁴⁸ GSD Rule 3A, Section 17(b), supra note 1.

⁴⁹ GSD Rule 3B, Section 17(a), supra note 1.

⁵⁰ GSD Rule 13, Section 4(m), supra note 1.

GSD Rules, including GSD Rule 50. References to the new MBSD Rule 40A would be added to MBSD Rule 3A, Section (m)⁵¹ to reflect that the new MBSD Rule 40A would apply to Cash Settling Bank Members in the same manner as other MBSD Rules, including MBSD Rule 40. References to the new MBSD Rule 40A would also be added to Section 5 of EPN Rule 1 of Article III of the EPN Rules⁵² to reflect that the new MBSD Rule 40A would be incorporated into the EPN Rules in the same manner as other MBSD Rules, including MBSD Rule 40.

(b) Statutory Basis

FICC believes that the proposal is consistent with the requirements of the Securities Exchange Act of 1934 (“Act”), and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes that each of the proposed rule changes is consistent with Section 17A(b)(3)(F) of the Act,⁵³ and Rules 17Ad-22(e)(1) and (e)(21)⁵⁴ promulgated under the Act. In addition, FICC believes that the proposed changes to add the two senior executive officers in the Force Majeure Rule and to add the proposed Systems Disconnect Rule are consistent with Rules 17Ad-22(e)(2) and (e)(17) under the Act.⁵⁵

Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act⁵⁶ requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

FICC believes that the proposed changes revising the FICC Confidentiality Requirements and adding the Participant Confidentiality Requirements are each consistent with this provision of the Act. The proposed revisions to the FICC Confidentiality Requirements are consistent with this provision because the proposed revisions would provide a clear and consistent standard relating to how FICC holds the information furnished by participants pursuant to Section 5 of

⁵¹ MBSD Rule 3A, Section (m), supra note 1.

⁵² Section 5 of EPN Rule 1 of Article III of the EPN Rules, supra note 1.

⁵³ 15 U.S.C. 78q-1(b)(3)(F).

⁵⁴ 17 CFR 240.17Ad-22(e)(1) and (e)(21).

⁵⁵ 17 CFR 240.17Ad-22(e)(2) and (e)(17).

⁵⁶ 15 U.S.C. 78q-1(b)(3)(F).

GSD Rule 2A,⁵⁷ Section 4 of GSD Rule 3,⁵⁸ Section 10 of GSD Rule 3,⁵⁹ Section 2(j) of GSD Rule 3A,⁶⁰ Section 3(e) of GSD Rule 3B,⁶¹ Section 5(k) of GSD Rule 3B,⁶² Section 6 of MBSD Rule 2A,⁶³ Section 3 of MBSD Rule 3,⁶⁴ Section 9 of MBSD Rule 3⁶⁵ and Section 9 of EPN Rule 1 of Article III of the EPN Rules.⁶⁶ The confidential information that FICC receives pursuant to these Rules is used by FICC to determine whether to admit a participant as a Member or EPN User, to continue to allow such participant to be a Member or EPN User, or to better understand the risks relating to each participant. Providing a clear and consistent standard would facilitate this process by allowing participants to better understand FICC's obligations with respect to such information and providing a uniform obligation for FICC with respect to such information. FICC believes that facilitating the ability of FICC to evaluate participants would promote the prompt and accurate clearance and settlement of securities transactions by FICC. As such, FICC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.⁶⁷

FICC also believes that the proposed rule change adding the Participant Confidentiality Requirements is consistent with this provision of the Act because the proposed revisions to the Participant Confidentiality Requirements would provide a clear and consistent contractual obligation for participants who are requesting confidential information from FICC. Having clear and consistent Rules would help participants to better understand their rights and obligations regarding FICC's clearance and settlement services. The information requested by participants that would be subject to the Participant Confidentiality Requirements would be used by participants to determine whether to participate in FICC's services, FICC system requirements and FICC system safeguards. FICC believes that when Members and EPN Users better understand their rights and obligations regarding FICC's clearance and settlement services, they can better act in accordance with the Rules. FICC believes that better enabling Members and

⁵⁷ Section 5 of GSD Rule 2A, supra note 1.

⁵⁸ Section 4 of GSD Rule 3, supra note 1.

⁵⁹ Section 10 of GSD Rule 3, supra note 1.

⁶⁰ Section 2(j) of GSD Rule 3A, supra note 1.

⁶¹ Section 3(e) of GSD Rule 3B, supra note 1.

⁶² Section 5(k) of GSD Rule 3B, supra note 1.

⁶³ Section 6 of MBSD Rule 2A, supra note 1.

⁶⁴ Section 3 of MBSD Rule 3, supra note 1.

⁶⁵ Section 9 of MBSD Rule 3, supra note 1.

⁶⁶ Section 9 of EPN Rule 1 of Article III of the EPN Rules, supra note 1.

⁶⁷ 15 U.S.C. 78q-1(b)(3)(F).

EPN Users to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by FICC. As such, FICC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.⁶⁸

FICC believes that the proposed changes to add the two officers to make a determination of a Market Disruption Event and to add the Systems Disconnect Rule in the GSD Rules and the MBSD Rules are also consistent with this provision of the Act because those changes would enhance and streamline FICC's ability to take necessary actions in the event of a Market Disruption Event or a Major Event. Improving the ability of FICC to react to a Market Disruption Event or a Major Event would allow FICC to protect its participants and their ability to promptly and accurately clear and settle securities transactions, and allow FICC to safeguard securities and funds that are in its custody or control. In particular, allowing two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to FICC while maintaining proper risk controls and improve the ability of FICC to act in the event of a Market Disruption Event. Also, providing for the ability of FICC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect FICC and its participants would, in each case, provide additional tools for FICC in the event of a Major Event.

Improving the governance around the determination of a Market Disruption Event, and the implementation of procedures allowing FICC to disconnect a DTCC Systems Participant or DTCC Systems Participants from FICC's systems or network due to an imminent threat of harm, would improve FICC's ability to address and minimize losses to FICC and its participants. Risks, threats and potential vulnerabilities due to a Market Disruption Event or a Major Event could impact FICC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in its custody or control, or for which it is responsible. In addition, providing governance around the ability to disconnect a DTCC Systems Participant that is having a systems disruption that could disrupt the ability of FICC or other DTCC Systems Participants from using FICC's systems would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Although disconnecting or limiting the service of a DTCC Systems Participant in the event of a Major Event would likely be an impediment to such DTCC Systems Participant, improving FICC's ability to address and minimize losses to FICC and its participants, and reducing risks, threats and potential vulnerabilities due to a Major Event that could impact FICC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in its custody or control or for which it is responsible, would be consistent with Section 17A(b)(3)(F) of the Act.⁶⁹

Therefore, by implementing tools that would help to mitigate these risks, FICC believes that the proposed rule change would promote the prompt and accurate clearance and settlement

⁶⁸ Id.

⁶⁹ Id.

of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁷⁰

Rule 17Ad-22(e)(1)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(1) promulgated under the Act,⁷¹ which requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.

Establishing clear and consistent rules for each participant with respect to the FICC Confidentiality Requirements would allow FICC to maintain one confidentiality standard for all participants rather than maintaining potentially different confidentiality standards for participants based on the various, unrelated regulatory bodies governing such participants. In addition, setting forth a clear contractual obligation relating to Participant Confidentiality Requirements would enhance the understanding of the participants receiving information from FICC and allow FICC to treat participants equally with respect to how the information furnished to participants should be protected by the participants.

Adding the two officers to make a determination of a Market Disruption Event and adding the Systems Disconnect Rule are also consistent with Rule 17Ad-22(e)(1) under the Act because those changes would describe the circumstances under which FICC could take actions in the event of a Market Disruption Event or a Major Event that are necessary to protect FICC and its participants. Providing clear guidelines with respect to Market Disruption Events and Major Events would allow participants to understand the rights and obligations of the participants in the event of a Market Disruption Event or a Major Event.

Therefore, by establishing uniform and clear standards with respect to its receipt and furnishing of confidential information, and by providing clear rights and obligations of FICC and its participants with respect to Market Disruption Events and Major Events, FICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(1) promulgated under the Act.⁷²

⁷⁰ Id.

⁷¹ 17 CFR 240.17Ad-22(e)(1).

⁷² Id.

Rule 17Ad-22(e)(21)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(21) promulgated under the Act,⁷³ which requires FICC to, inter alia, establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves. The proposed rule change would streamline the FICC Confidentiality Requirements by providing that FICC would apply one standard for all participants relating to confidential information sent to FICC by participants, which would enhance (i) efficiency by avoiding applying varying standards of confidentiality based on the rules and regulations of the varying regulatory bodies that regulate the participants, and (ii) effectiveness by reducing potential conflicts of laws and providing equal treatment to participants relating to such confidential information.

The addition of the Participant Confidentiality Requirements would also provide a uniform and easily discernable requirement for all participants with respect to confidential information provided by FICC allowing FICC to provide necessary information to such participants in a safe and efficient manner. Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to FICC while maintaining proper risk controls and improve the ability of FICC to act quickly, efficiently and effectively in a Market Disruption Event to address and minimize losses. Also, providing for the ability of FICC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect FICC and its participants would, in each case, provide additional tools for FICC in the event of a Major Event and improve FICC's ability to act quickly, efficiently and effectively in the event of a Major Event to address and minimize losses.

Therefore, by establishing a more efficient and effective process for the treatment of confidential language, and establishing procedures designed to improve FICC's ability to act quickly, efficiently and effectively in the event of a Market Disruption Event and a Major Event, FICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(21) promulgated under the Act.⁷⁴

Rule 17Ad-22(e)(2)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(2) promulgated under the Act,⁷⁵ which requires FICC to, inter alia, establish, implement, maintain and enforce written policies and procedures reasonably designed to provide

⁷³ 17 CFR 240.17Ad-22(e)(21).

⁷⁴ Id.

⁷⁵ 17 CFR 240.17Ad-22(e)(2).

for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.

Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to FICC while maintaining proper risk controls, and improve the ability of FICC to act quickly, efficiently and effectively in a Market Disruption Event and mitigate any impact from such Market Disruption Event. Adding these officers to the governance procedures relating to a determination of a Market Disruption Event would make such governance procedures clear and transparent, and specify clear and direct lines of responsibility with respect to the determination of a Market Disruption Event, consistent with Rule 17Ad-22(e)(2) under the Act.⁷⁶

Adding the governance procedures relating to making a determination of a Major Event in the Systems Disconnect Rule is also consistent with Rule 17Ad-22(e)(2) promulgated under the Act.⁷⁷ Identifying the officers that have the ability to determine if there is a Major Event, and providing for the ability of any management committee on which all of such officers serve and the Board of Directors to ratify, modify or rescind any determination of a Major Event by an officer would make such governance procedures clear and transparent, and specify clear and direct lines of responsibility with respect to the determination of a Major Event, consistent with Rule 17Ad-22(e)(2).⁷⁸

Rule 17Ad-22(e)(17)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(17)(i) promulgated under the Act,⁷⁹ which requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.

Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to FICC while maintaining proper risk controls and improve the ability of FICC to act quickly, efficiently and effectively in a Market Disruption Event and mitigate any impact from such Market Disruption Event. Also, providing for the ability of FICC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect FICC and its participants would,

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ 17 CFR 240.17Ad-22(e)(17)(i).

in each case, provide additional tools for FICC in the event of a Major Event and improve FICC's ability to act quickly, efficiently and effectively in the event of a Major Event and mitigate any impact from such Major Event.

Therefore, by providing clear, efficient procedures of FICC and its participants with respect to Market Disruption Events and Major Events that help identify and mitigate operational risks, FICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(17)(i) promulgated under the Act.⁸⁰

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

FICC does not believe that the proposed changes relating to the FICC Confidentiality Requirements would have any impact on competition. These changes would provide one standard for how FICC treats participant information furnished subject to the FICC Confidentiality Requirements but would not affect the information that the participants are required to provide or affect the manner in which the participants must provide the information. As such, FICC believes these proposed rule changes would not have any impact on competition.

FICC does not believe the proposed changes relating to adding Participant Confidentiality Requirements would have any impact on competition. Although the addition of the Participant Confidentiality Requirements would be adding obligations on participants with respect to how they treat confidential or proprietary information of FICC or its affiliates, such obligations would be minimal because FICC would only require that such participants hold such confidential information using the same means they use to protect their own confidential information but not less than a reasonable standard of care. The use of this standard would protect FICC by providing a clear legal obligation to protect such information but would not be burdensome or expensive for participants, and therefore FICC believes that it would not have any impact on competition.

FICC does not believe the changes relating to adding the two officers to make a determination of a Market Disruption Event would have any impact on competition. The proposed rule change would add two senior executive officers of FICC, the Chief Information Officer and the Head of Clearing Agency Services, to the list of officers that could make a determination of a Market Disruption Event if the Board of Directors is unable to convene. Such addition would provide additional officers who could determine whether there is a Market Disruption Event but would not otherwise affect the rights of participants or FICC in the determination of a Market Disruption Event or if a Market Disruption Event is declared. Therefore, FICC does not believe that the addition of the two officers would have any impact on competition.

FICC does not believe that the changes relating to adding the Systems Disconnect Rule would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act.⁸¹ To the extent that FICC determines that there is a

⁸⁰ Id.

⁸¹ 15 U.S.C. 78q-1(b)(3)(I).

Major Event, it could take or refrain from taking actions, or require participants to take or refrain from taking actions, that could burden competition because such requirements could cause participants to incur additional costs, allow FICC to suspend services or communications or disconnect a DTCC Systems Participant from the DTCC Systems. FICC believes such burden on competition could be significant but would be both necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act,⁸² for the reasons described below.

FICC believes that the proposed changes to add the Systems Disconnect Rule are necessary in furtherance of the purposes of Section 17A(b)(3)(F) of the Act,⁸³ and Rules 17Ad-22(e)(1), (e)(2), (e)(17) and (e)(21) promulgated under the Act.⁸⁴ The proposed changes to add the Systems Disconnect Rule would (i) improve the ability of FICC to react to a Major Event allowing FICC to protect itself and its participants and their ability to promptly and accurately clear and settle securities transactions, and allow FICC to safeguard securities and funds that are in its custody or control, consistent with the requirements of Section 17A(b)(3)(F) of the Act,⁸⁵ (ii) provide clear guidelines with respect to Major Events that would allow participants to understand the rights and obligations of the participants and FICC in the event of a Major Event, consistent with Rule 17Ad-22(e)(1) promulgated under the Act,⁸⁶ (iii) identify the officers that have the ability to determine if there is a Major Event, and provide for the ability of any management committee on which all of such officers serve, and the Board of Directors, to ratify, modify or rescind any determination of a Major Event by an officer, which would make such governance procedures clear and transparent, and specify clear and direct lines of responsibility with respect to the determination of a Major Event, consistent with Rule 17Ad 22(e)(2) promulgated under the Act,⁸⁷ (iv) improve the ability of FICC to act quickly, efficiently and effectively in the event of a Major Event, and mitigate any impact from such event by providing clear, efficient procedures of FICC and its participants with respect to such event consistent with the requirements of Rule 17Ad-22(e)(17)(i) promulgated under the Act⁸⁸ and (v) establish procedures designed to improve FICC's ability to act quickly, efficiently and effectively in the event of a Major Event, consistent with the requirements of Rule 17Ad-22(e)(21) promulgated under the Act.⁸⁹

⁸² Id.

⁸³ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁴ 17 CFR 240.17Ad-22(e)(1), (e)(2), (e)(17) and (e)(21).

⁸⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁶ 17 CFR 240.17Ad-22(e)(1).

⁸⁷ 17 CFR 240.17Ad-22(e)(2).

⁸⁸ 17 CFR 240.17Ad-22(e)(17)(i).

⁸⁹ 17 CFR 240.17Ad-22(e)(21).

In addition, FICC believes that the proposed changes to add the Systems Disconnect Rule are appropriate in furtherance of the Act. Such changes have been designed to improve the ability of FICC to act quickly, efficiently and effectively in the event of a Major Event, and mitigate any impact from such event while also providing the participants clear guidelines with respect to such event to allow participants to understand their rights and obligations. Such changes have also been designed to apply uniformly to all Members and EPN Users in the event of a Major Event and should not affect FICC's day-to-day operations under normal circumstances, or in the management of a typical Member or EPN User default scenario or non-default event.

Therefore, FICC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.⁹⁰

5. Self-Regulatory Organization'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 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 Act⁹¹ 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

Not applicable.

⁹⁰ 15 U.S.C. 78q-1(b)(3)(I).

⁹¹ 15 U.S.C. 78s(b)(2).

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

Not applicable.

10. Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act 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-2021-004)

[DATE]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Confidential Information, Market Disruption Events, and 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 __, 2021, 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 modifications to FICC’s Government Securities Division (“GSD”) Rulebook (the “GSD Rules”), Mortgage-Backed Securities Division (“MBSD”) Clearing Rules (the “MBSD Clearing Rules”) and MBSD EPN Rules (the “EPN Rules,” and collectively with the GSD Rules and the MBSD Clearing Rules, the “Rules”)³ to (i) revise certain provisions in the Rules relating to the confidentiality of information furnished by applicants, Members and EPN Users

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms not defined herein are defined in the GSD Rules, MBSD Clearing Rules or the EPN Rules, as applicable, available at <https://www.dtcc.com/legal/rules-and-procedures>.

(collectively, “participants”) to FICC, (ii) require that each participant maintain confidential information furnished by FICC or its affiliates in confidence and restrict use and disclosure of such information, (iii) add certain officers who are allowed to determine that there is a Market Disruption Event pursuant to GSD Rule 50 and MBSD Rule 40 and (iv) add a new GSD Rule 50A and MBSD Rule 40A to address situations in which it is necessary to disconnect a Member, EPN User, third party service provider, or service bureau due to an imminent threat of harm to FICC, Members, EPN Users and/or other market participants. Each of the proposed changes is described in greater detail 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 proposed rule change consists of modifications to (i) revise certain provisions in the Rules relating to the confidentiality of information furnished by participants to FICC, (ii) require that each participant maintain confidential information furnished by FICC or its affiliates in confidence and restrict use and disclosure of such information, (iii) add certain officers who are allowed to determine that there is a Market Disruption Event pursuant to GSD Rule 50 and MBSD Rule 40 and (iv) add a new GSD Rule 50A

and MBSD Rule 40A to address situations in which it is necessary to disconnect a Member, EPN User, third party service provider, or service bureau due to an imminent threat of harm to FICC, Members, EPN Users and/or other market participants. Each of the proposed changes is described in greater detail below.

(i) FICC Confidentiality Requirements

Section 5 of GSD Rule 2A,⁴ Section 4 of GSD Rule 3,⁵ Section 10 of GSD Rule 3,⁶ Section 2(j) of GSD Rule 3A,⁷ Section 3(e) of GSD Rule 3B,⁸ Section 5(k) of GSD

⁴ Section 5 of GSD Rule 2A, supra note 3. GSD Rule 2A relates to initial membership requirements including information that FICC may require applicants to furnish to become Members of FICC.

⁵ Section 4 of GSD Rule 3, supra note 3. GSD Rule 3 relates to ongoing membership requirements including information that FICC may require Members to furnish to FICC to continue membership at FICC.

⁶ Section 10 of GSD Rule 3, supra note 3. Section 10 of GSD Rule 3 states that the books and records of Members, and in the case of a Registered Investment Company Netting Member, their Controlling Management, shall be open to inspection and that FICC shall be furnished certain information.

⁷ Section 2(j) of GSD Rule 3A, supra note 3. GSD Rule 3A relates to the rights, liabilities and obligations of Sponsoring Members and Sponsored Members including information that FICC may require Sponsoring Members, Sponsored Members and applicants to become Sponsoring Members or Sponsored Members, to furnish to FICC.

⁸ Section 3(e) of GSD Rule 3B, supra note 3. GSD Rule 3B relates to the rights, liabilities and obligations of CCIT Members including information that FICC may require CCIT Members and applicants to become CCIT Members to furnish to FICC.

Rule 3B,⁹ Section 6 of MBSD Rule 2A,¹⁰ Section 3 of MBSD Rule 3,¹¹ Section 9 of MBSD Rule 3¹² and Section 9 of EPN Rule 1 of Article III of the EPN Rules¹³ each contain provisions relating to confidentiality of information furnished by participants to FICC (collectively, the “FICC Confidentiality Requirements”). Each of the FICC Confidentiality Requirements provides that either (a) such furnished information will be held by FICC in the same degree of confidence as may be required by law or the rules and regulations of the appropriate regulatory body having jurisdiction over the participant or (b) the rights of FICC to inspect books and records or receive information is subject to any applicable laws or rules or regulations of regulatory bodies having jurisdiction over the participant that relate to confidentiality of records. FICC is proposing to update the FICC Confidentiality Requirements because such provisions (i) may result in unequal treatment of participants due to differing laws or regulations of regulatory bodies,

⁹ Section 5(k) of GSD Rule 3B, supra note 3. Section 5(k) of GSD Rule 3B states that the books and records of CCIT Members, and their Controlling Management, shall be open to inspection and that FICC shall be furnished certain information.

¹⁰ Section 6 of MBSD Rule 2A, supra note 3. MBSD Rule 2A relates to initial membership requirements including information that FICC may require applicants to furnish to become Clearing Members of FICC.

¹¹ Section 3 of MBSD Rule 3, supra note 3. MBSD Rule 3 relates to ongoing membership requirements including information that FICC may require Members to furnish to FICC to continue membership in FICC.

¹² Section 9 of MBSD Rule 3, supra note 3. Section 9 of MBSD Rule 3 states that the books and records of Members shall be open to inspection and that FICC shall be furnished certain information.

¹³ Section 9 of EPN Rule 1 of Article III of the EPN Rules, supra note 3. Rule 1 of Article III of the EPN Rules relates to initial and ongoing requirements to become and continue to be an EPN User including information that FICC may require applicants or EPN Users to provide to FICC.

(ii) may result in a potential conflict of laws where rules or regulations governing a regulatory body of a participant differ from the laws applicable to FICC, or a participant has multiple regulatory bodies whose rules conflict, (iii) are burdensome as they require FICC to track the rules and regulations of each regulatory body of its participants, and ensure that information provided by participants to FICC is held in confidence to the same degree as it is held by such regulatory bodies, or to determine what applicable laws or rules or regulations of regulatory bodies that relate to confidentiality of records affect FICC's rights to receive information and (iv) are unnecessary as FICC has sufficient protections in place relating to protection and confidentiality of participant data.

The regulatory bodies that have jurisdiction over participants differ by participant depending on certain criteria of each participant, including the type of entity of the participant, where the participant was organized, the types of businesses in which the participant engages and where the participant is doing business. In addition, many participants are regulated by more than one regulatory body. As a result, a requirement to maintain confidentiality standards for information provided by a participant or the right to receive information based on the regulatory body or bodies that regulate such participant result in varying standards of confidentiality for participants that are regulated by different regulatory bodies. Such varying standards may result in unequal treatment of participants due to differing laws or regulations of the regulatory body or bodies governing such participants. In addition, such varying standards may result in a potential conflict of laws where rules or regulations governing a regulatory body of a participant differ from the laws applicable to FICC or an entity that has multiple regulatory bodies whose rules conflict.

FICC believes that it is unnecessarily burdensome to determine the rules and regulations of each of the regulatory bodies that regulate its participants. Such regulatory bodies include numerous U.S. federal and state regulators as well as foreign national, state and local regulators. FICC proposes revising the language in the FICC Confidentiality Requirements to maintain one confidentiality standard for all participants rather than maintaining potentially different confidentiality standards for participants based on the various, unrelated regulatory bodies regulating such participants. FICC is proposing to replace the existing language in the FICC Confidentiality Requirements with language that would provide that FICC will hold non-public information furnished pursuant to those Rules in confidence as may be required under the law or the rules and regulations applicable to FICC that relate to the confidentiality of records. Such laws, rules and regulations would include national, state and foreign laws governing confidentiality of data that are applicable to FICC in connection with its collection and disclosure of data.

FICC believes that the rules and regulations applicable to FICC governing the use and disclosure of confidential information provide standards that are representative of those of the various regulatory bodies governing its participants. As a result, FICC does not believe that the proposed rule change relating to the FICC Confidentiality Requirements would result in any change to FICC's practices relating to data protection and confidentiality of information provided by participants.

(ii) Participant Confidentiality Requirements

Historically, FICC has generally not provided, nor been requested to provide, information that contains confidential or proprietary information of FICC or its affiliates

to its participants except for information necessary for participants and their service providers and service bureaus to connect to FICC and to participate in the services that FICC offers to its participants. While certain information is protected by intellectual property rights of FICC and its affiliates under applicable intellectual property laws, such as copyright laws and trademark laws, the Rules do not include any express obligations for participants to protect confidential information received by them from FICC or its affiliates.

In connection with the development of cyber and information security programs pursuant to applicable regulatory requirements by participants, FICC and its parent company, The Depository Trust & Clearing Corporation (“DTCC”), have received an increasing number of requests from participants for confidential and proprietary information of FICC and DTCC.¹⁴ This includes, for example, information regarding DTCC’s network operations and data security practices, legal settlements, and other information. Additionally, in the event there is a cyber incident relating to a participant, FICC or DTCC may be requested to disclose confidential information regarding its cyber threat indicators, sources of cyber threat information, or other information and actions taken related to a cyber event.

In order to provide for contractual protections for such confidential information of DTCC, FICC and DTCC’s other subsidiaries, FICC is proposing to add provisions to the

¹⁴ DTCC provides a set of core business processes for FICC and DTCC’s other subsidiaries, including the technology systems and networks that provide connectivity between FICC and its participants and that provide the ability of FICC to provide the services as required under its Rules. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides relevant services to FICC and DTCC’s other subsidiaries.

Rules that would require participants to maintain confidential information of FICC and its affiliates that FICC provides to such participants in confidence and not to disclose such confidential information except as necessary to perform such participant's obligations under FICC's Rules or as otherwise required by applicable law ("Participant Confidentiality Requirements"). The Participant Confidentiality Requirements would provide that in the event of a breach of the Participant Confidentiality Requirements, FICC or DTCC would be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages under the Rules. In addition, as with any failure to comply with its Rules, FICC would have the ability to impose other disciplinary proceedings or restrictions on access to services as provided in the Rules for failure to comply with the Participant Confidentiality Requirements.

(iii) Market Disruption Events

GSD Rule 50 and MBSD Rule 40 (Market Disruption and Force Majeure)¹⁵ (the "Force Majeure Rule") contain provisions that identify the events or circumstances that would be considered a Market Disruption Event, including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which FICC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems.¹⁶ The Force Majeure Rule set forth in MBSD Rule 40 is also incorporated into the EPN Rules, and EPN Users are treated as Members for purposes of the EPN Rules, and references to "Rules" and "Procedures" are treated as

¹⁵ GSD Rule 50 and MBSD Rule 40, supra note 3. The Force Majeure Rule is identical in the GSD Rules and the MBSD Rules.

¹⁶ Id.

references to EPN Rules for purposes of the EPN Rules.¹⁷ Under the Force Majeure Rule, during the pendency of a Market Disruption Event, FICC would be entitled to (i) suspend the provision of any or all services and (ii) take, or refrain from taking, or require Members to take, or refrain from taking, any actions FICC considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of FICC's services as may be practicable.¹⁸

Section 2 of the Force Majeure Rule provides that the Board of Directors may determine the existence of a Market Disruption Event and the actions to be taken in response thereto.¹⁹ However, if the Board of Directors is unable to convene, the Force Majeure Rule provides that certain officers may make such determination, on an interim basis, which determination is then ratified, modified or rescinded as soon as practicable by the Board of Directors. The officers that may make such determination are all senior executive officers of FICC: Chief Executive Officer, Chief Financial Officer, Group Chief Risk Officer and General Counsel.

The proposed rule change would add two senior executive officers of FICC, the Chief Information Officer and the Head of Clearing Agency Services, to the list of officers that could make such determination if the Board of Directors is unable to convene. These two officers, like the other senior executive officers currently listed in the Rules, maintain senior executive level positions at FICC, oversee divisions of FICC, and hold positions at FICC that would provide them a necessary global view into FICC's

¹⁷ See Section 5 of EPN Rule 1 of Article III of the EPN Rules, supra note 3.

¹⁸ Id.

¹⁹ Section 2 of GSD Rule 50 and Section 2 of MBSD Rule 40, supra note 3.

operations and systems to enable them to determine the existence of a Market Disruption Event in the event that the Board of Directors is unable to convene. Adding these two additional officers would facilitate FICC's ability to implement its emergency procedures in the event of a Market Disruption Event.

(iv) Systems Disconnect: Threat of Significant Impact to FICC's Systems

The proposed rule change would add a new GSD Rule 50A and an identical new MBSD Rule 40A (Systems Disconnect: Threat of Significant Impact to the Corporation's Systems) ("Systems Disconnect Rule") that would address situations in which FICC determines it is necessary for FICC to disconnect a single or limited number of Members, or third party service providers or service bureaus used by Members to connect to FICC²⁰ (collectively, "DTCC Systems Participants") from FICC's systems or network due to an imminent threat of harm to FICC's or DTCC's systems. The imminent threat could be the result of a system disruption or cyber incident applicable to the DTCC Systems Participants. This would allow DTCC to work with the affected participants while protecting FICC, its systems and its other participants. Like the Force Majeure Rule set forth in MBSD Rule 40, the new MBSD Rule 40A would be incorporated into the EPN Rules, and EPN Users would be treated as Members, and references to "Rules" and "Procedures" would be treated as references to EPN Rules for purposes of the EPN Rules.

²⁰ Some Members use third parties to connect to FICC's systems and/or to send data to FICC and receive data from FICC on the Member's or EPN User's behalf. Such third parties are referred to as "service providers" or "service bureaus" herein.

The proposed Systems Disconnect Rule would be structured similarly to the Force Majeure Rule. The Systems Disconnect Rule would address FICC’s authority to take certain actions upon the occurrence, and during the pendency, of a Major Event. A “Major Event” would be defined as the happening of one or more “Systems Disruption(s)” (as defined below) that is reasonably likely to have a significant impact on FICC’s operations, including the “DTCC Systems” (as defined below), that affect the business, operations, safeguarding of securities or funds, or physical functions of Members and/or other market participants. “Systems Disruption” would be defined as the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of a DTCC Systems Participant’s systems that disrupts or degrades the normal operation of such DTCC Systems Participant’s systems; or anything that impacts or alters the normal communication or the files that are received, or information transmitted, to or from the DTCC Systems. “DTCC Systems” would be defined as the systems, equipment and technology networks of DTCC, FICC and/or their Affiliates,²¹ whether owned, leased, or licensed, software, devices, IP addresses or other addresses or accounts used in connection with providing the services set forth in the Rules, or used to transact business or to manage the connection with FICC.

The proposed Systems Disconnect Rule would allow FICC to mitigate the effect of such events by facilitating the continuity of services (or, if deemed necessary, the temporary suspension of services). To that end, under the proposed Systems Disconnect

²¹ Affiliate is defined in GSD Rule 1 and MBSD Rule 1, as applicable, and is intended to cover DTCC and DTCC’s other subsidiaries that use shared systems with FICC. GSD Rule 1 and MBSD Rule 1, supra note 3. See description of the shared systems of DTCC, FICC and DTCC’s other subsidiaries, supra note 14.

Rule, FICC would be entitled, during the pendency of a Major Event, to (1) disconnect a DTCC Systems Participant's systems from the DTCC Systems, (2) suspend the receipt and/or transmission of files or communications to or from the DTCC Systems Participant to the DTCC Systems and/or (3) take, or refrain from taking, or require a DTCC Systems Participant to take or refrain from taking, any actions that FICC considers appropriate to prevent, address, correct, mitigate or alleviate the Major Event and facilitate the continuation of services as may be practicable and, in that context, issue instructions to the DTCC Systems Participant.

The proposed Systems Disconnect Rule would define the governance procedures for how FICC would determine whether, and how, to implement the provisions of the rule. A determination that a Major Event has occurred could be made by the same officers with delegated authority under the Force Majeure Rule as discussed above (an "Officer Major Event Action"). Following this determination, any management committee on which all of the foregoing officers serve would convene, and FICC would convene a Board of Directors meeting as soon as practicable thereafter, and in any event within five Business Days following such determination, in each case, to ratify, modify, or rescind the Officer Major Event Action. The proposed Systems Disconnect Rule would require Members to notify FICC immediately upon becoming aware of a Major Event, and, likewise, would require FICC to promptly notify the DTCC Systems Participant(s) of any action FICC takes or intends to take with respect to such DTCC Systems Participant(s) pursuant to the proposed rule.

Finally, the Systems Disconnect Rule would address certain miscellaneous matters including: (i) a limitation of liability for any failure or delay in performance, in

whole or in part of FICC's obligations under the Rules, arising out of or related to a Major Event, (ii) a statement that the power of FICC to take any action pursuant to the Systems Disconnect Rule also includes the power to repeal, rescind, revoke, amend or vary such action, (iii) a statement that the powers of FICC pursuant to the Systems Disconnect Rule shall be in addition to and not in derogation of, authority granted elsewhere in the Rules to take action as specified therein, (iv) a requirement that Members shall keep any DTCC Confidential Information (as defined below) provided to them by FICC and/or in connection with a Major Event confidential and (v) a statement that in the event of any conflict between the provisions of the Systems Disconnect Rule and any other Rules or Procedures, the provisions of the Systems Disconnect Rule would prevail.

(v) *Proposed Rule Changes*

The proposed rule change would amend the Rules to make the following changes to implement the changes discussed above:

FICC Confidentiality Requirements Changes

The proposed rule change would amend the FICC Confidentiality Requirements in Section 5 of GSD Rule 2A,²² Section 4 of GSD Rule 3,²³ Section 10 of GSD Rule 3,²⁴ Section 2(j) of GSD Rule 3A,²⁵ Section 3(e) of GSD Rule 3B,²⁶ Section 5(k) of GSD

²² Section 5 of GSD Rule 2A, supra note 3.

²³ Section 4 of GSD Rule 3, supra note 3.

²⁴ Section 10 of GSD Rule 3, supra note 3.

²⁵ Section 2(j) of GSD Rule 3A, supra note 3.

²⁶ Section 3(e) of GSD Rule 3B, supra note 3.

Rule 3B,²⁷ Section 6 of MBSD Rule 2A,²⁸ Section 3 of MBSD Rule 3,²⁹ Section 9 of MBSD Rule 3³⁰ and Section 9 of EPN Rule 1 of Article III of the EPN Rules.³¹ to state as follows:

[A]ny non-public information furnished to the Corporation pursuant to this Rule shall be held in confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records.

As discussed above, the proposed language is intended to provide one standard that FICC would apply uniformly to all participants, which assures participants that such information would be held in confidence with appropriate controls. FICC would add “non-public” when describing the information that is subject to the FICC Confidentiality Requirements to make it clear that such requirements would only apply to information that is not public. In addition, in Section 5 of GSD Rule 2A,³² Section 4 of GSD Rule 3,³³ Section 2(j) of GSD Rule 3A³⁴ and Section 3(e) of GSD Rule 3B,³⁵ FICC would

²⁷ Section 5(k) of GSD Rule 3B, supra note 3.

²⁸ Section 6 of MBSD Rule 2A, supra note 3.

²⁹ Section 3 of MBSD Rule 3, supra note 3.

³⁰ Section 9 of MBSD Rule 3, supra note 3.

³¹ Section 9 of EPN Rule 1 of Article III of the EPN Rules, supra note 3.

³² Section 5 of GSD Rule 2A, supra note 3.

³³ Section 4 of GSD Rule 3, supra note 3.

³⁴ Section 2(j) of GSD Rule 3A, supra note 3.

³⁵ Section 3(e) of GSD Rule 3B, supra note 3.

remove the phrase “Except as otherwise provided in Rule 29” or “Except as otherwise provided in Rule 29 (Clearing Data)” because the exception would no longer be needed with the addition of the proposed language. GSD Rule 29³⁶ relates to the ability of FICC to release “Clearing Data” under certain circumstances. Because GSD Rule 29 would be a rule applicable to FICC, it would be covered by the proposed language which states that FICC would hold the information in confidence subject to rules applicable to it. FICC would remove a similar reference to MBSD Rule 22³⁷ in Section 6 of MBSD Rule 2A³⁸ and Section 3 of MBSD Rule 3³⁹ for the same reason. FICC would also amend a sentence in the Board Statements of Policy in the GSD Rules that references the FICC Confidentiality Requirements set forth in GSD Rule 3 to reflect the proposed updated language.

Certain Rules relating to FICC Confidentiality Requirements would also include language relating to Participant Confidentiality Requirements as described below.

Participant Confidentiality Requirements

In order to provide for Participant Confidentiality Requirements, FICC would add provisions in Section 5 of GSD Rule 2A,⁴⁰ Section 4 of GSD Rule 3,⁴¹ Section 2(j) of

³⁶ GSD Rule 29, supra note 3.

³⁷ MBSD Rule 22, supra note 3.

³⁸ Section 6 of MBSD Rule 2A, supra note 3.

³⁹ Section 3 of MBSD Rule 3, supra note 3.

⁴⁰ Section 5 of GSD Rule 2A, supra note 3.

⁴¹ Section 4 of GSD Rule 3, supra note 3.

GSD Rule 3A,⁴² Section 3(e) of GSD Rule 3B,⁴³ Section 6 of MBSD Rule 2A,⁴⁴ Section 3 of MBSD Rule 3,⁴⁵ and Section 9 of EPN Rule 1 of Article III of the EPN Rules⁴⁶ to state that each participant shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform its obligations under the Rules or as otherwise required by applicable law. FICC would add a new definition of DTCC Confidential Information in GSD Rule 1 and MBSD Rule 1⁴⁷ to provide that “DTCC Confidential Information” would mean all non-public information provided by DTCC and/or FICC that (i) is marked or otherwise identified in writing prior to disclosure to the recipient as confidential, (ii) is designated by DTCC or FICC as confidential, or (iii) the recipient knows or, under the circumstances surrounding disclosure, ought to reasonably know is confidential. FICC would also add a definition of DTCC in GSD Rule 1 and MBSD Rule 1, and remove a corresponding definition in GSD Rule 22D and MBSD Rule 17B⁴⁸ since it would be defined in GSD Rule 1 and MBSD Rule 1.

⁴² Section 2(j) of GSD Rule 3A, supra note 3.

⁴³ Section 3(e) of GSD Rule 3B, supra note 3.

⁴⁴ Section 6 of MBSD Rule 2A, supra note 3.

⁴⁵ Section 3 of MBSD Rule 3, supra note 3.

⁴⁶ Section 9 of EPN Rule 1 of Article III of the EPN Rules, supra note 3.

⁴⁷ GSD Rule 1 and MBSD Rule 1, supra note 3.

⁴⁸ GSD Rule 22D and MBSD Rule 17B, supra note 3.

FICC would also add a statement in each provision relating to Participant Confidentiality Requirements that each participant acknowledges that a breach of its confidentiality obligations under the Rules may result in serious and irreparable harm to FICC and/or DTCC for which there is no adequate remedy at law. In the event of such a breach by the participant, FICC and/or DTCC would be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages.

Force Majeure Rule Officer Additions

The proposed rule change would add the Chief Information Officer and the Head of Clearing Agency Services to the list of officers that could make a determination of a Market Disruption Event if the Board of Directors is unable to convene in GSD Rule 50 and MBSD Rule 40.⁴⁹

Systems Disconnect Rule

The proposed rule change would add a new GSD Rule 50A and MBSD Rule 40A entitled “Systems Disconnect: Threat of Significant Impact to the Corporation’s Systems” that would address situations in which FICC determines it is necessary for FICC to disconnect a DTCC Systems Participant or DTCC Systems Participants from FICC’s systems or network due to an imminent threat of harm to FICC’s or DTCC’s systems consistent with the description above. The proposed Systems Disconnect Rule would include new definitions for “DTCC Systems,” “DTCC Systems Participant,” “Major Event” and “Systems Disruption” consistent with the descriptions of the Systems Disconnect Rule above.

⁴⁹ GSD Rule 50 and MBSD Rule 40, supra note 3.

References to the new GSD Rule 50A would be added to GSD Rule 3A, Section 17(b),⁵⁰ GSD Rule 3B, Section 17(a)⁵¹ and GSD Rule 13, Section 4(m),⁵² in each case, to reflect that the new GSD Rule 50A would apply to Sponsored Members and Sponsoring Members, CCIT Members and Funds-Only Settling Bank Members, respectively, in the same manner as other GSD Rules, including GSD Rule 50. References to the new MBSD Rule 40A would be added to MBSD Rule 3A, Section (m)⁵³ to reflect that the new MBSD Rule 40A would apply to Cash Settling Bank Members in the same manner as other MBSD Rules, including MBSD Rule 40. References to the new MBSD Rule 40A would also be added to Section 5 of EPN Rule 1 of Article III of the EPN Rules⁵⁴ to reflect that the new MBSD Rule 40A would be incorporated into the EPN Rules in the same manner as other MBSD Rules, including MBSD Rule 40.

2. Statutory Basis

FICC believes that the proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes that each of the proposed rule changes is consistent with Section 17A(b)(3)(F) of the Act,⁵⁵ and Rules 17Ad-22(e)(1) and (e)(21)⁵⁶ promulgated

⁵⁰ GSD Rule 3A, Section 17(b), supra note 3.

⁵¹ GSD Rule 3B, Section 17(a), supra note 3.

⁵² GSD Rule 13, Section 4(m), supra note 3.

⁵³ MBSD Rule 3A, Section (m), supra note 3.

⁵⁴ Section 5 of EPN Rule 1 of Article III of the EPN Rules, supra note 3.

⁵⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁵⁶ 17 CFR 240.17Ad-22(e)(1) and (e)(21).

under the Act. In addition, FICC believes that the proposed changes to add the two senior executive officers in the Force Majeure Rule and to add the proposed Systems Disconnect Rule are consistent with Rules 17Ad-22(e)(2) and (e)(17) under the Act.⁵⁷

Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act⁵⁸ requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

FICC believes that the proposed changes revising the FICC Confidentiality Requirements and adding the Participant Confidentiality Requirements are each consistent with this provision of the Act. The proposed revisions to the FICC Confidentiality Requirements are consistent with this provision because the proposed revisions would provide a clear and consistent standard relating to how FICC holds the information furnished by participants pursuant to Section 5 of GSD Rule 2A,⁵⁹ Section 4 of GSD Rule 3,⁶⁰ Section 10 of GSD Rule 3,⁶¹ Section 2(j) of GSD Rule 3A,⁶² Section

⁵⁷ 17 CFR 240.17Ad-22(e)(2) and (e)(17).

⁵⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁵⁹ Section 5 of GSD Rule 2A, supra note 3.

⁶⁰ Section 4 of GSD Rule 3, supra note 3.

⁶¹ Section 10 of GSD Rule 3, supra note 3.

⁶² Section 2(j) of GSD Rule 3A, supra note 3.

3(e) of GSD Rule 3B,⁶³ Section 5(k) of GSD Rule 3B,⁶⁴ Section 6 of MBSD Rule 2A,⁶⁵ Section 3 of MBSD Rule 3,⁶⁶ Section 9 of MBSD Rule 3⁶⁷ and Section 9 of EPN Rule 1 of Article III of the EPN Rules.⁶⁸ The confidential information that FICC receives pursuant to these Rules is used by FICC to determine whether to admit a participant as a Member or EPN User, to continue to allow such participant to be a Member or EPN User, or to better understand the risks relating to each participant. Providing a clear and consistent standard would facilitate this process by allowing participants to better understand FICC's obligations with respect to such information and providing a uniform obligation for FICC with respect to such information. FICC believes that facilitating the ability of FICC to evaluate participants would promote the prompt and accurate clearance and settlement of securities transactions by FICC. As such, FICC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.⁶⁹

FICC also believes that the proposed rule change adding the Participant Confidentiality Requirements is consistent with this provision of the Act because the proposed revisions to the Participant Confidentiality Requirements would provide a clear and consistent contractual obligation for participants who are requesting confidential

⁶³ Section 3(e) of GSD Rule 3B, supra note 3.

⁶⁴ Section 5(k) of GSD Rule 3B, supra note 3.

⁶⁵ Section 6 of MBSD Rule 2A, supra note 3.

⁶⁶ Section 3 of MBSD Rule 3, supra note 3.

⁶⁷ Section 9 of MBSD Rule 3, supra note 3.

⁶⁸ Section 9 of EPN Rule 1 of Article III of the EPN Rules, supra note 3.

⁶⁹ 15 U.S.C. 78q-1(b)(3)(F).

information from FICC. Having clear and consistent Rules would help participants to better understand their rights and obligations regarding FICC's clearance and settlement services. The information requested by participants that would be subject to the Participant Confidentiality Requirements would be used by participants to determine whether to participate in FICC's services, FICC system requirements and FICC system safeguards. FICC believes that when Members and EPN Users better understand their rights and obligations regarding FICC's clearance and settlement services, they can better act in accordance with the Rules. FICC believes that better enabling Members and EPN Users to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by FICC. As such, FICC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.⁷⁰

FICC believes that the proposed changes to add the two officers to make a determination of a Market Disruption Event and to add the Systems Disconnect Rule in the GSD Rules and the MBSD Rules are also consistent with this provision of the Act because those changes would enhance and streamline FICC's ability to take necessary actions in the event of a Market Disruption Event or a Major Event. Improving the ability of FICC to react to a Market Disruption Event or a Major Event would allow FICC to protect its participants and their ability to promptly and accurately clear and settle securities transactions, and allow FICC to safeguard securities and funds that are in its custody or control. In particular, allowing two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to FICC while

⁷⁰ Id.

maintaining proper risk controls and improve the ability of FICC to act in the event of a Market Disruption Event. Also, providing for the ability of FICC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect FICC and its participants would, in each case, provide additional tools for FICC in the event of a Major Event.

Improving the governance around the determination of a Market Disruption Event, and the implementation of procedures allowing FICC to disconnect a DTCC Systems Participant or DTCC Systems Participants from FICC's systems or network due to an imminent threat of harm, would improve FICC's ability to address and minimize losses to FICC and its participants. Risks, threats and potential vulnerabilities due to a Market Disruption Event or a Major Event could impact FICC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in its custody or control, or for which it is responsible. In addition, providing governance around the ability to disconnect a DTCC Systems Participant that is having a systems disruption that could disrupt the ability of FICC or other DTCC Systems Participants from using FICC's systems would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Although disconnecting or limiting the service of a DTCC Systems Participant in the event of a Major Event would likely be an impediment to such DTCC Systems Participant, improving FICC's ability to address and minimize losses to FICC and its participants, and reducing risks, threats and potential vulnerabilities due to a Major Event that could impact FICC's ability to clear and settle securities transactions, or to safeguard the

securities and funds which are in its custody or control or for which it is responsible, would be consistent with Section 17A(b)(3)(F) of the Act.⁷¹

Therefore, by implementing tools that would help to mitigate these risks, FICC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁷²

Rule 17Ad-22(e)(1)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(1) promulgated under the Act,⁷³ which requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.

Establishing clear and consistent rules for each participant with respect to the FICC Confidentiality Requirements would allow FICC to maintain one confidentiality standard for all participants rather than maintaining potentially different confidentiality standards for participants based on the various, unrelated regulatory bodies governing such participants. In addition, setting forth a clear contractual obligation relating to

⁷¹ Id.

⁷² Id.

⁷³ 17 CFR 240.17Ad-22(e)(1).

Participant Confidentiality Requirements would enhance the understanding of the participants receiving information from FICC and allow FICC to treat participants equally with respect to how the information furnished to participants should be protected by the participants.

Adding the two officers to make a determination of a Market Disruption Event and adding the Systems Disconnect Rule are also consistent with Rule 17Ad-22(e)(1) under the Act because those changes would describe the circumstances under which FICC could take actions in the event of a Market Disruption Event or a Major Event that are necessary to protect FICC and its participants. Providing clear guidelines with respect to Market Disruption Events and Major Events would allow participants to understand the rights and obligations of the participants in the event of a Market Disruption Event or a Major Event.

Therefore, by establishing uniform and clear standards with respect to its receipt and furnishing of confidential information, and by providing clear rights and obligations of FICC and its participants with respect to Market Disruption Events and Major Events, FICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(1) promulgated under the Act.⁷⁴

Rule 17Ad-22(e)(21)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(21) promulgated under the Act,⁷⁵ which requires FICC to, inter alia, establish, implement, maintain and enforce written policies and procedures reasonably

⁷⁴ Id.

⁷⁵ 17 CFR 240.17Ad-22(e)(21).

designed to be efficient and effective in meeting the requirements of its participants and the markets it serves. The proposed rule change would streamline the FICC Confidentiality Requirements by providing that FICC would apply one standard for all participants relating to confidential information sent to FICC by participants, which would enhance (i) efficiency by avoiding applying varying standards of confidentiality based on the rules and regulations of the varying regulatory bodies that regulate the participants, and (ii) effectiveness by reducing potential conflicts of laws and providing equal treatment to participants relating to such confidential information.

The addition of the Participant Confidentiality Requirements would also provide a uniform and easily discernable requirement for all participants with respect to confidential information provided by FICC allowing FICC to provide necessary information to such participants in a safe and efficient manner. Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to FICC while maintaining proper risk controls and improve the ability of FICC to act quickly, efficiently and effectively in a Market Disruption Event to address and minimize losses. Also, providing for the ability of FICC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect FICC and its participants would, in each case, provide additional tools for FICC in the event of a Major Event and improve FICC's ability to act quickly, efficiently and effectively in the event of a Major Event to address and minimize losses.

Therefore, by establishing a more efficient and effective process for the treatment of confidential language, and establishing procedures designed to improve FICC's ability to act quickly, efficiently and effectively in the event of a Market Disruption Event and a Major Event, FICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(21) promulgated under the Act.⁷⁶

Rule 17Ad-22(e)(2)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(2) promulgated under the Act,⁷⁷ which requires FICC to, inter alia, establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.

Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to FICC while maintaining proper risk controls, and improve the ability of FICC to act quickly, efficiently and effectively in a Market Disruption Event and mitigate any impact from such Market Disruption Event. Adding these officers to the governance procedures relating to a determination of a Market Disruption Event would make such governance procedures clear and transparent, and specify clear and direct lines of responsibility with respect to the determination of a Market Disruption Event, consistent with Rule 17Ad-22(e)(2) under the Act.⁷⁸

⁷⁶ Id.

⁷⁷ 17 CFR 240.17Ad-22(e)(2).

⁷⁸ Id.

Adding the governance procedures relating to making a determination of a Major Event in the Systems Disconnect Rule is also consistent with Rule 17Ad-22(e)(2) promulgated under the Act.⁷⁹ Identifying the officers that have the ability to determine if there is a Major Event, and providing for the ability of any management committee on which all of such officers serve and the Board of Directors to ratify, modify or rescind any determination of a Major Event by an officer would make such governance procedures clear and transparent, and specify clear and direct lines of responsibility with respect to the determination of a Major Event, consistent with Rule 17Ad-22(e)(2).⁸⁰

Rule 17Ad-22(e)(17)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(17)(i) promulgated under the Act,⁸¹ which requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.

Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to FICC while maintaining proper risk controls and improve the ability of FICC to act quickly, efficiently and effectively in a Market Disruption Event and mitigate any impact from such Market Disruption Event. Also,

⁷⁹ Id.

⁸⁰ Id.

⁸¹ 17 CFR 240.17Ad-22(e)(17)(i).

providing for the ability of FICC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect FICC and its participants would, in each case, provide additional tools for FICC in the event of a Major Event and improve FICC's ability to act quickly, efficiently and effectively in the event of a Major Event and mitigate any impact from such Major Event.

Therefore, by providing clear, efficient procedures of FICC and its participants with respect to Market Disruption Events and Major Events that help identify and mitigate operational risks, FICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(17)(i) promulgated under the Act.⁸²

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

FICC does not believe that the proposed changes relating to the FICC Confidentiality Requirements would have any impact on competition. These changes would provide one standard for how FICC treats participant information furnished subject to the FICC Confidentiality Requirements but would not affect the information that the participants are required to provide or affect the manner in which the participants must provide the information. As such, FICC believes these proposed rule changes would not have any impact on competition.

FICC does not believe the proposed changes relating to adding Participant Confidentiality Requirements would have any impact on competition. Although the addition of the Participant Confidentiality Requirements would be adding obligations on

⁸² Id.

participants with respect to how they treat confidential or proprietary information of FICC or its affiliates, such obligations would be minimal because FICC would only require that such participants hold such confidential information using the same means they use to protect their own confidential information but not less than a reasonable standard of care. The use of this standard would protect FICC by providing a clear legal obligation to protect such information but would not be burdensome or expensive for participants, and therefore FICC believes that it would not have any impact on competition.

FICC does not believe the changes relating to adding the two officers to make a determination of a Market Disruption Event would have any impact on competition. The proposed rule change would add two senior executive officers of FICC, the Chief Information Officer and the Head of Clearing Agency Services, to the list of officers that could make a determination of a Market Disruption Event if the Board of Directors is unable to convene. Such addition would provide additional officers who could determine whether there is a Market Disruption Event but would not otherwise affect the rights of participants or FICC in the determination of a Market Disruption Event or if a Market Disruption Event is declared. Therefore, FICC does not believe that the addition of the two officers would have any impact on competition.

FICC does not believe that the changes relating to adding the Systems Disconnect Rule would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act.⁸³ To the extent that FICC determines that there is a Major Event, it could take or refrain from taking actions, or

⁸³ 15 U.S.C. 78q-1(b)(3)(I).

require participants to take or refrain from taking actions, that could burden competition because such requirements could cause participants to incur additional costs, allow FICC to suspend services or communications or disconnect a DTCC Systems Participant from the DTCC Systems. FICC believes such burden on competition could be significant but would be both necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act,⁸⁴ for the reasons described below.

FICC believes that the proposed changes to add the Systems Disconnect Rule are necessary in furtherance of the purposes of Section 17A(b)(3)(F) of the Act,⁸⁵ and Rules 17Ad-22(e)(1), (e)(2), (e)(17) and (e)(21) promulgated under the Act.⁸⁶ The proposed changes to add the Systems Disconnect Rule would (i) improve the ability of FICC to react to a Major Event allowing FICC to protect itself and its participants and their ability to promptly and accurately clear and settle securities transactions, and allow FICC to safeguard securities and funds that are in its custody or control, consistent with the requirements of Section 17A(b)(3)(F) of the Act,⁸⁷ (ii) provide clear guidelines with respect to Major Events that would allow participants to understand the rights and obligations of the participants and FICC in the event of a Major Event, consistent with Rule 17Ad-22(e)(1) promulgated under the Act,⁸⁸ (iii) identify the officers that have the ability to determine if there is a Major Event, and provide for the ability of any

⁸⁴ Id.

⁸⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁶ 17 CFR 240.17Ad-22(e)(1), (e)(2), (e)(17) and (e)(21).

⁸⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁸ 17 CFR 240.17Ad-22(e)(1).

management committee on which all of such officers serve, and the Board of Directors, to ratify, modify or rescind any determination of a Major Event by an officer, which would make such governance procedures clear and transparent, and specify clear and direct lines of responsibility with respect to the determination of a Major Event, consistent with Rule 17Ad 22(e)(2) promulgated under the Act,⁸⁹ (iv) improve the ability of FICC to act quickly, efficiently and effectively in the event of a Major Event, and mitigate any impact from such event by providing clear, efficient procedures of FICC and its participants with respect to such event consistent with the requirements of Rule 17Ad-22(e)(17)(i) promulgated under the Act⁹⁰ and (v) establish procedures designed to improve FICC's ability to act quickly, efficiently and effectively in the event of a Major Event, consistent with the requirements of Rule 17Ad-22(e)(21) promulgated under the Act.⁹¹

In addition, FICC believes that the proposed changes to add the Systems Disconnect Rule are appropriate in furtherance of the Act. Such changes have been designed to improve the ability of FICC to act quickly, efficiently and effectively in the event of a Major Event, and mitigate any impact from such event while also providing the participants clear guidelines with respect to such event to allow participants to understand their rights and obligations. Such changes have also been designed to apply uniformly to all Members and EPN Users in the event of a Major Event and should not affect FICC's

⁸⁹ 17 CFR 240.17Ad-22(e)(2).

⁹⁰ 17 CFR 240.17Ad-22(e)(17)(i).

⁹¹ 17 CFR 240.17Ad-22(e)(21).

day-to-day operations under normal circumstances, or in the management of a typical Member or EPN User default scenario or non-default event.

Therefore, FICC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.⁹²

(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

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:

⁹² 15 U.S.C. 78q-1(b)(3)(I).

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-2021-004 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-2021-004. 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-2021-004 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.⁹³

Secretary

⁹³ 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

* * *

DTC Settling Bank

The term “DTC Settling Bank” means an entity that qualifies as a settling bank under DTC’s rules and has been approved as such by DTC.

DTCC

The term “DTCC” means The Depository Trust & Clearing Corporation.

DTCC Confidential Information

The term “DTCC Confidential Information” shall mean all non-public information provided by DTCC and/or the Corporation that (i) is marked or otherwise identified in writing prior to disclosure to the recipient as confidential, (ii) is designated by DTCC or the Corporation as confidential, or (iii) the recipient knows or, under the circumstances surrounding disclosure, ought to reasonably know is confidential.

* * *

RULE 2A - INITIAL MEMBERSHIP REQUIREMENTS

* * *

Section 5 – Application Documents

* * *

~~Except as otherwise provided in Rule 29, a~~ Any non-public information furnished to the Corporation pursuant to this Rule shall be held in at least the same degree of confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records by law or the rules and regulations of the appropriate regulatory body having jurisdiction over the applicant or Member. Each applicant shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such applicant’s obligations under these Rules or as otherwise required by applicable law. Each applicant acknowledges that a breach of its confidentiality obligations under these Rules may result in serious and irreparable harm to the Corporation and/or DTCC for which there is no adequate remedy at law. In the event of such a breach by the applicant, the Corporation and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages hereunder.

* * *

RULE 3 – ONGOING MEMBERSHIP REQUIREMENTS

* * *

Section 4 – Confidentiality

~~Except as otherwise provided in Rule 29, a~~ Any non-public information furnished to the Corporation pursuant to this Rule shall be held in ~~at least the same degree of~~ confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records by law or the rules and regulations of the appropriate regulatory body having jurisdiction over the applicant or Member. Each applicant and Member shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such applicant's or Member's obligations under these Rules or as otherwise required by applicable law. Each applicant and Member acknowledges that a breach of its confidentiality obligations under these Rules may result in serious and irreparable harm to the Corporation and/or DTCC for which there is no adequate remedy at law. In the event of such a breach by the applicant or Member, the Corporation and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages hereunder.

* * *

Section 10 - Books and Records

The books and records of a Member and, in the case of a Registered Investment Company Netting Member, its Controlling Management, insofar as they relate to transactions processed through the Corporation, shall be open to the inspection of the duly authorized representatives of the Corporation upon reasonable prior notice and during the Member's or its Controlling Management's normal business hours, as applicable. The Corporation shall be furnished with all such information about the business and transactions of the Member and, in the case of a Registered Investment Company Netting Member, its Controlling Management, as it may require; provided that (i) any non-public information furnished to the Corporation pursuant to this Rule shall be held in confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records~~the aforesaid rights of the Corporation shall be subject to any applicable laws or rules or regulations of regulatory bodies having jurisdiction over the Member which relate to the confidentiality of records~~, and (ii) if the Member ceases membership, the Corporation shall have no right to inspect the Member's or its Controlling Management's books and records, as applicable, or to require information relating to transactions wholly subsequent to the time when the Member ceases membership.

* * *

RULE 3A—SPONSORING MEMBERS AND SPONSORED MEMBERS

* * *

Section 2 – Qualifications of Sponsoring Members, the Application Process and Continuance Standards

* * *

(j) ~~Except as otherwise provided in Rule 29, a~~ Any **non-public** information furnished to the Corporation pursuant to this Rule shall be held in ~~at least the same degree of~~ confidence as may be required **under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records by law or the rules and regulations of the appropriate regulatory body having jurisdiction over the Sponsoring Member. Each Sponsoring Member shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such Sponsoring Member's obligations under these Rules or as otherwise required by applicable law. Each Sponsoring Member acknowledges that a breach of its confidentiality obligations under these Rules may result in serious and irreparable harm to the Corporation and/or DTCC for which there is no adequate remedy at law. In the event of such a breach by the Sponsoring Member, the Corporation and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages hereunder**

* * *

Section 17 – Other Applicable Rules, Schedules, Interpretations and Statements

* * *

(b) Rule 22D (Wind-down of the Corporation), Rule 27 (Admission to Premises of the Corporation, Powers of Attorney, Etc.), Rule 28 (Forms), Rule 29 (Release of Clearing Data), Rule 30 (Lists to be Maintained), Rule 31 (Distribution Facilities), Rule 32 (Signatures), Rule 33 (Procedures), Rule 34 (Insurance), Rule 35 (Financial Reports), Rule 36 (Rule Changes), Rule 37 (Hearing Procedures), Rule 38 (Governing Law and Captions), Rule 39 (Limitations of Liability), Section 3 of Rule 40 (General Provisions), Rule 41 (Cross-Guaranty Agreements), Rule 42 (Suspension of Rules), Rule 44 (Action by the Corporation), Rule 45 (Notices), Rule 46 (Interpretation of Terms), Rule 47 (Interpretation of Rules), Rule 48 (Disciplinary Proceedings), ~~and~~ Rule 50 (Market Disruption and Force Majeure) **and Rule 50A (Systems Disconnect: Threat of Significant Impact to the Corporation's Systems)** shall apply to, or with respect to, Sponsored Members and Sponsoring Members

* * *

RULE 3B – CENTRALLY CLEARED INSTITUTIONAL TRIPARTY SERVICE

* * *

Section 3 – Membership Application Process to Become a CCIT Member

* * *

(e) ~~Except as otherwise provided in Rule 29 (Release of Clearing Data), a~~ **Any non-public** information furnished to the Corporation pursuant to this Rule shall be held in ~~at least the same degree of~~ confidence as may be required **under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records by law or the rules and regulations of the appropriate regulatory body having jurisdiction over the applicant or Member. Each applicant and Member shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such applicant's or Member's obligations under these Rules or as otherwise required by applicable law. Each applicant and Member acknowledges that a breach of its confidentiality obligations under these Rules may result in serious and irreparable harm to the Corporation and/or DTCC for which there is no adequate remedy at law. In the event of such a breach by the applicant or Member, the Corporation and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages hereunder.**

* * *

Section 5 – On-going Membership Requirements

* * *

(k) A CCIT Member's and its Controlling Management's books and records, insofar as they relate to such CCIT Member's transactions processed through the Corporation, shall be open to the inspection of the duly authorized representatives of the Corporation upon reasonable prior notice and during the CCIT Member's or its Controlling Management's normal business hours. The Corporation shall be furnished with all such information about the CCIT Member's and its Controlling Management's business and transactions as it may require; provided that (i) **any non-public information furnished to the Corporation pursuant to this Rule shall be held in confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records**~~the aforesaid rights of the Corporation shall be subject to any applicable laws or rules or regulations of regulatory bodies having jurisdiction over the CCIT Member or its Controlling Management which relate to the confidentiality of records~~ and (ii) if the CCIT Member ceases membership, the Corporation shall have no right to inspect the CCIT Member's or its Controlling Management's

books and records or to require information relating to transactions wholly subsequent to the time when the CCIT Member ceases membership.

* * *

Section 17 – Other Applicable Rules, Schedules, Interpretations and Statements

(a) Rule 1 (Definitions), Rule 22B (Corporation Default), Rule 22C (Interpretation in Relation to the Federal Deposit Insurance Corporation Act of 1991), Rule 22D (Wind-down of the Corporation), Rule 23 (Fine Payments), Rule 25 (Bills Rendered), Rule 27 (Admission to Premises of the Corporation, Powers of Attorney, Etc.), Rule 28 (Forms), Rule 29 (Release of Clearing Data), Rule 31 (Distribution Facilities), Rule 32 (Signatures), Rule 33 (Procedures), Rule 34 (Insurance), Rule 35 (Financial Reports), Rule 36 (Rule Changes), Rule 37 (Hearing Procedures), Rule 38 (Governing Law and Captions), Rule 39 (Limitations of Liability), Rule 40 (General Provisions), Rule 41 (Cross Guaranty Agreements), Rule 42 (Suspension of Rules), Rule 44 (Action by the Corporation), Rule 45 (Notices), Rule 46 (Interpretation of Terms), Rule 47 (Interpretation of Rules), Rule 48 (Disciplinary Proceedings), ~~and~~ Rule 50 (Market Disruption and Force Majeure) **and Rule 50A (Systems Disconnect: Threat of Significant Impact to the Corporation's Systems)** shall apply to CCIT Members with respect to CCIT Transactions in the same way as these provisions apply to Netting Members.

* * *

RULE 13 - FUNDS-ONLY SETTLEMENT

Section 4 – Funds-Only Settling Bank Members

* * *

(m) In addition to this Rule 13 and applicable provisions of Rule 1, the following Rules and any relevant schedules cited therein shall apply to Funds-Only Settling Bank Members in the same manner as they apply to Netting Members: Rule 22D (Wind-down of the Corporation), Rule 29 (Release of Clearing Data), Rule 32 (Signatures), Rule 33 (Procedures), Rule 36 (Rule Changes), Rule 37 (Hearing Procedures), Rule 38 (Governing Law and Captions), Rule 39 (Limitations of Liability), Rule 42 (Suspension of Rules), Rule 44 (Action by the Corporation), Rule 45 (Notices), Rule 46 (Interpretation of Terms), Rule 47 (Interpretation of Rules), Rule 48 (Disciplinary Proceedings), ~~and~~ Rule 50 (Market Disruption and Force Majeure) **and Rule 50A (Systems Disconnect: Threat of Significant Impact to the Corporation's Systems)**.

* * *

RULE 22D – WIND-DOWN OF THE CORPORATION

Section 1. Defined Terms

- (a) For purposes of this Rule 22D:

* * *

~~“DTCC” means The Depository Trust & Clearing Corporation.~~

* * *

RULE 50 – MARKET DISRUPTION AND FORCE MAJEURE

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Section 2. Powers of the Corporation

If the Board of Directors or any officer of the Corporation listed below determines, in its, his, or her judgment that there is a Market Disruption Event, the Corporation shall be entitled to act (or refrain from acting) as prescribed in Section 3 of this Rule 50. To the extent practicable, the determination of the existence of a Market Disruption Event, and the actions to be taken in response thereto, shall be made by the Board of Directors at a meeting where a quorum is present and acting. However, if the Corporation is unable to convene a Board meeting promptly and timely in such event, then such determination may be made by either the Chief Executive Officer, the Chief Financial Officer, the Group Chief Risk Officer, **the Chief Information Officer, the Head of Clearing Agency Services,** or the General Counsel, or by any management committee on which all of the foregoing officers serves (an “Officer Market Disruption Event Action”), provided that the Corporation shall convene a Board meeting as soon as practicable thereafter (and in any event within 5 Business Days following such determination) to ratify, modify or rescind such Officer Market Disruption Event Action.

* * *

RULE 50A – SYSTEMS DISCONNECT: THREAT OF SIGNIFICANT IMPACT TO THE CORPORATION’S SYSTEMS

Section 1 – Major Event

For purposes of this Rule, the following terms shall have the following meanings:

“DTCC Systems” means the systems, equipment and technology networks of DTCC, the Corporation and/or their Affiliates, whether owned, leased, or licensed, software, devices, IP addresses or other addresses or accounts used in connection with providing the services

set forth in the Rules or used to transact business or to manage the connection with the Corporation.

“DTCC Systems Participant” shall mean a Member, or third party service provider, or service bureau that is connecting with the DTCC Systems.

“Major Event” shall mean the happening of one or more Systems Disruption(s) that is reasonably likely to have a significant impact on the Corporation’s operations, including the DTCC Systems, that affect the business, operations, safeguarding of securities or funds, or physical functions of the Corporation, Members and/or other market participants.

“Systems Disruption” shall mean the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of a DTCC Systems Participant’s systems that disrupts or degrades the normal operation of such DTCC Systems Participant’s systems; or anything that impacts or alters the normal communication, or the files that are received, or information transmitted, to or from the DTCC Systems.

Section 2 – Powers of the Corporation

The determination that the Corporation has a reasonable basis to conclude that there has been a Major Event and shall be entitled to act (or refrain from acting) as prescribed in Section 3 of this Rule 50A may be made by either the Chief Executive Officer, the Chief Financial Officer, the Group Chief Risk Officer, the Chief Information Officer, the Head of Clearing Agency Services or the General Counsel (an “Officer Major Event Action”). As soon as practical following such a decision, any management committee on which all of the foregoing officers serve shall convene, and the Corporation shall convene a Board of Directors meeting as soon as practicable thereafter (and in any event within 5 Business Days following such determination), in each case, to ratify, modify or rescind such Officer Major Event Action.

Section 3 – Authority to take Actions

Upon the determination that there is a Major Event, the Corporation shall be entitled, during the pendency of such Major Event, to:

- (a) disconnect the DTCC Systems Participant’s system from the DTCC Systems;
- (b) suspend the receipt and/or transmission of files or communications to/from the DTCC Systems Participant to the DTCC Systems; or
- (c) take, or refrain from taking, or require the DTCC Systems Participant to take or refrain from taking, any and all action that the Corporation considers appropriate to prevent, address, correct, mitigate or alleviate the Major Event and facilitate the continuation of services as may be practicable, and, in that context, issue instructions to the DTCC Systems Participant.

Section 4 – Notifications

(a) Each Member shall notify the Corporation immediately upon becoming aware of any Major Event and cooperate with the Corporation to identify the root cause and resolution.

(b) The Corporation shall promptly notify the DTCC Systems Participant(s) of any action the Corporation takes or intends to take with respect to such DTCC Systems Participant(s) pursuant to Section 3 of this Rule 50A.

Section 5 – Certain Miscellaneous Matters

(a) Without limiting any other provisions in these Rules concerning limitations on liability, none of the Corporation or its Affiliates, its or their directors, officers, employees, agents, or contractors shall be liable to a Member or any other person (including any third party provider or service bureau acting on behalf of the Member or any customer or client thereof) for:

- (i) any failure, hindrance, interruption or delay in performance in whole or in part of the obligations of the Corporation under the Rules or Procedures, if that failure, hindrance, interruption or delay arises out of or relates to a Major Event; or
- (ii) any loss, liability, damage, cost or expense arising from or relating in any way to any actions taken, or omitted to be taken, pursuant to this Rule 50A.

(b) The power of the Corporation to take any action pursuant to this Rule 50A also includes the power to repeal, rescind, revoke, amend, or vary any such action.

(c) The powers of the Corporation pursuant to this Rule 50A shall be in addition to, and not in derogation of, authority granted elsewhere in these Rules to take action as specified therein.

(d) The Members(s) shall, in accordance with the Rules, maintain the confidentiality of any DTCC Confidential Information provided to them by the Corporation and/or DTCC in connection with a Major Event.

(e) In the event of any conflict between the provisions of this Rule 50A and any other Rules or Procedures, the provisions of this Rule 50A shall prevail.

* * *

BOARD STATEMENTS OF POLICY

STATEMENT OF POLICY OF THE BOARD OF DIRECTORS OF THE GOVERNMENT SECURITIES CLEARING CORPORATION ON THE RELEASE OF INFORMATION

Section 17A(b)(3) of the Securities Exchange Act of 1934, as amended (the “Act”), provides, among other things, that the rules of clearing agency self-regulatory organizations must be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to protect investors and the public interest. The Corporation recognizes in Rule 29 its obligation as a self-regulatory organization to share clearing, financial, and other data on its members with other SEC-regulated, self-regulatory organizations for regulatory purposes. Rule 3 provides the Corporation with the authority to examine the financial and operational conditions of its members, and to receive information relevant to such examination from any other SEC-regulated, self-regulatory organization. Rule 3 also requires the Corporation to **hold information furnished to the Corporation pursuant to Rule 3 in confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records**~~maintain the same degree of confidentiality regarding such financial and operational information that the appropriate regulatory body having jurisdiction over the member would maintain.~~

* * *

FIXED INCOME CLEARING CORPORATION
MORTGAGE-BACKED SECURITIES DIVISION
CLEARING RULES

RULE 1 – DEFINITIONS

* * *

DTC Settling Bank

The term “DTC Settling Bank” means an entity that qualifies as a settling bank under DTC’s rules and has been approved as such by DTC.

DTCC

The term “DTCC” means The Depository Trust & Clearing Corporation.

DTCC Confidential Information

The term “DTCC Confidential Information” shall mean all non-public information provided by DTCC and/or the Corporation that (i) is marked or otherwise identified in writing prior to disclosure to the recipient as confidential, (ii) is designated by DTCC or the Corporation as confidential, or (iii) the recipient knows or, under the circumstances surrounding disclosure, ought to reasonably know is confidential.

* * *

RULE 2A – INITIAL MEMBERSHIP REQUIREMENTS

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Section 6 – Confidentiality

Except as otherwise provided in Rule 22, “Release of Clearing Data,” any non-public information furnished to the Corporation pursuant to this Rule shall be held in at least the same degree of confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records by law or the rules and regulations of the appropriate regulatory body having jurisdiction over the applicant or Member. Each applicant and Member shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such applicant’s or Member’s obligations under these Rules or as otherwise required by applicable law. Each applicant and Member acknowledges that a breach of its confidentiality obligations under these Rules may result in serious and irreparable harm to the Corporation and/or DTCC for which there is no adequate remedy at law. In the event of such a breach by the applicant or Member, the Corporation and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages hereunder.

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RULE 3 - ONGOING MEMBERSHIP REQUIREMENTS

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Section 3 – Confidentiality

~~Except as otherwise provided in Rule 22, “Release of Clearing Data,” a~~Any non-public information furnished to the Corporation pursuant to this Rule shall be held in ~~at least the same degree of~~ confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records ~~by law or the rules and regulations of the appropriate regulatory body having jurisdiction over the applicant or Member.~~ Each applicant and Member shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such applicant’s or Member’s obligations under these Rules or as otherwise required by applicable law. Each applicant and Member acknowledges that a breach of its confidentiality obligations under these Rules may result in serious and irreparable harm to the Corporation and/or DTCC for which there is no adequate remedy at law. In the event of such a breach by the applicant or Member, the Corporation and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages hereunder.

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Section 9- Books and Records

A Member’s books and records, insofar as they relate to Transactions processed through the Corporation, shall be open to the inspection of the duly authorized representatives of the Corporation upon reasonable prior notice and during the Member’s normal business hours. The Corporation shall be furnished with all such information about the Member’s business and Transactions as it may require; provided that (i) any non-public information furnished to the Corporation pursuant to this Rule shall be held in confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records ~~the aforesaid rights of the Corporation shall be subject to any applicable laws or rules or regulations of regulatory bodies having jurisdiction over the Member which relate to the confidentiality of records~~, and (ii) if the Member ceases membership, the Corporation shall have no right to inspect the Member’s books and records or to require information relating to Transactions wholly subsequent to the time when the Member ceases membership.

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RULE 3A - CASH SETTLEMENT BANK MEMBERS

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(m) In addition to the applicable provisions of these Rules where Cash Settling Bank Members are mentioned, the following Rules and any relevant schedules cited therein shall apply to Cash Settling Bank Members in the same manner as they apply to Members: Rule 17B, “Winddown of the Corporation,” Rule 22, “Release of Clearing Data,” Rule 24, “Signatures,” Rule 27, “Rule Changes,” Rule 28, “Hearing Procedures,” Rule 29, “Governing Law and Captions,” Rule 30, “Limitations of Liability,” Rule 33, “Suspension of Rules in Emergency Circumstances,” Rule 34, “Action by the Corporation,” Rule 35, “Notices,” Rule 36, “Interpretation of Terms,” Rule 37, “Interpretation of Rules,” Rule 38 “Disciplinary Proceedings,” ~~and~~ **Rule 40A “Systems Disconnect: Threat of Significant Impact to the Corporation’s Systems.”**

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RULE 17B – WIND-DOWN OF THE CORPORATION

Section 1. Defined Terms

(a) For purposes of this Rule 17B:

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“DTCC” means The Depository Trust & Clearing Corporation.

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RULE 40 – MARKET DISRUPTION AND FORCE MAJEURE

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Section 2. Powers of the Corporation

If the Board of Directors or any officer of the Corporation listed below determines, in its, his, or her judgment that there is a Market Disruption Event, the Corporation shall be entitled to act (or refrain from acting) as prescribed in Section 3 of this Rule 40. To the extent practicable, the determination of the existence of a Market Disruption Event, and the actions to be taken in response thereto, shall be made by the Board of Directors at a meeting where a quorum is present and acting. However, if the Corporation is unable to convene a Board meeting promptly and timely in such event, then such determination may be made by either the Chief Executive Officer, the Chief Financial Officer, the Group Chief Risk Officer, **the Chief Information Officer, the Head of Clearing Agency Services,** or the General Counsel, or by any management committee on which all of the foregoing officers serves (an “Officer Market Disruption Event Action”), provided that the Corporation shall convene a Board meeting as soon as practicable thereafter (and in any event

within 5 Business Days following such determination) to ratify, modify or rescind such Officer Market Disruption Event Action

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**RULE 40A – SYSTEMS DISCONNECT:
THREAT OF SIGNIFICANT IMPACT TO THE CORPORATION’S SYSTEMS**

Section 1 – Major Event

For purposes of this Rule, the following terms shall have the following meanings:

“DTCC Systems” means the systems, equipment and technology networks of DTCC, the Corporation and/or their Affiliates, whether owned, leased, or licensed, software, devices, IP addresses or other addresses or accounts used in connection with providing the services set forth in the Rules or used to transact business or to manage the connection with the Corporation.

“DTCC Systems Participant” shall mean a Member, or third party service provider, or service bureau that is connecting with the DTCC Systems.

“Major Event” shall mean the happening of one or more Systems Disruption(s) that is reasonably likely to have a significant impact on the Corporation’s operations, including the DTCC Systems, that affect the business, operations, safeguarding of securities or funds, or physical functions of the Corporation, Members and/or other market participants.

“Systems Disruption” shall mean the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of a DTCC Systems Participant’s systems that disrupts or degrades the normal operation of such DTCC Systems Participant’s systems; or anything that impacts or alters the normal communication, or the files that are received, or information transmitted, to or from the DTCC Systems.

Section 2 – Powers of the Corporation

The determination that the Corporation has a reasonable basis to conclude that there has been a Major Event and shall be entitled to act (or refrain from acting) as prescribed in Section 3 of this Rule 40A may be made by either the Chief Executive Officer, the Chief Financial Officer, the Group Chief Risk Officer, the Chief Information Officer, the Head of Clearing Agency Services or the General Counsel serve (an “Officer Major Event Action”). As soon as practical following such a decision, any management committee on which all of the foregoing officers shall convene, and the Corporation shall convene a Board of Directors meeting as soon as practicable thereafter (and in any event within 5 Business Days following such determination), in each case, to ratify, modify or rescind such Officer Major Event Action.

Section 3 – Authority to take Actions

Upon the determination that there is a Major Event, the Corporation shall be entitled, during the pendency of such Major Event, to:

- (a) disconnect the DTCC Systems Participant’s system from the DTCC Systems;
- (b) suspend the receipt and/or transmission of files or communications to/from the DTCC Systems Participant to the DTCC Systems; or
- (c) take, or refrain from taking, or require the DTCC Systems Participant to take or refrain from taking, any and all action that the Corporation considers appropriate to prevent, address, correct, mitigate or alleviate the Major Event and facilitate the continuation of services as may be practicable, and, in that context, issue instructions to the DTCC Systems Participant.

Section 4 – Notifications

(a) Each Member shall notify the Corporation immediately upon becoming aware of any Major Event and cooperate with the Corporation to identify the root cause and resolution.

(b) The Corporation shall promptly notify the DTCC Systems Participant(s) of any action the Corporation takes or intends to take with respect to such DTCC Systems Participant(s) pursuant to Section 3 of this Rule 40A.

Section 5 – Certain Miscellaneous Matters

(a) Without limiting any other provisions in these Rules concerning limitations on liability, none of the Corporation or its Affiliates, its or their directors, officers, employees, agents, or contractors shall be liable to a Member or any other person (including any third party provider or service bureau acting on behalf of the Member or any customer or client thereof) for:

- (i) any failure, hindrance, interruption or delay in performance in whole or in part of the obligations of the Corporation under the Rules or Procedures, if that failure, hindrance, interruption or delay arises out of or relates to a Major Event; or
- (ii) any loss, liability, damage, cost or expense arising from or relating in any way to any actions taken, or omitted to be taken, pursuant to this Rule 40A.

(b) The power of the Corporation to take any action pursuant to this Rule 40A also includes the power to repeal, rescind, revoke, amend, or vary any such action.

(c) The powers of the Corporation pursuant to this Rule 40A shall be in addition to, and not in derogation of, authority granted elsewhere in these Rules to take action as specified therein.

(d) The Members(s) shall, in accordance with the Rules, maintain the confidentiality of any DTCC Confidential Information provided to them by the Corporation and/or DTCC in connection with a Major Event.

(e) In the event of any conflict between the provisions of this Rule 40A and any other Rules or Procedures, the provisions of this Rule 40A shall prevail.

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FIXED INCOME CLEARING CORPORATION
MORTGAGE-BACKED SECURITIES DIVISION
EPN RULES

ARTICLE III EPN USERS

Rule 1. Requirements Applicable to EPN Users

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Sec. 5. EPN Users Bound by EPN Rules and Applicable Laws

Subject to the provisions of Rule 12 of Article V, the use of the facilities of the Corporation by an EPN User shall constitute such EPN User's agreement with the Corporation and with all other EPN Users to be bound by the provisions of, and by any action taken or order issued by the Corporation pursuant to (i) these EPN Rules and any amendment thereto, (ii) Rule 17B of the Clearing Rules of the Mortgage-Backed Securities Division (Wind-down of the Corporation), to the extent specified therein, ~~and~~ (iii) Rule 40 of the Clearing Rules of the Mortgage-Backed Securities Division (Market Disruption and Force Majeure) and (iv) Rule 40A of the Clearing Rules of the Mortgage-Backed Securities Division (Systems Disconnect: Threat of Significant Impact to the Corporation's Systems), as if references to "Members" therein were references to "EPN Users," and references to "Rules" and "Procedures" therein were references to "EPN Rules" (items (ii), ~~and~~ (iii) and (iv)), as the same may be amended from time to time, collectively being referred to in these EPN Rules as the "Incorporated Clearing Rules"). In addition, in connection with their use of the Corporation's services, an EPN User must comply with all applicable laws, including applicable laws relating to securities, taxation, and money laundering.

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Sec. 9. Confidentiality

Any non-public information furnished to the Corporation pursuant to this Rule shall be held in ~~at least the same degree of~~ confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records by law or the rules and regulations of the appropriate regulatory body having jurisdiction over the applicant or EPN User. Each applicant and EPN User shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such applicant's or EPN User's obligations under these Rules or as otherwise required by applicable law. Each applicant and EPN User acknowledges that a breach of its confidentiality obligations under these Rules may result in serious and irreparable harm to the Corporation and/or DTCC for which there is no adequate remedy at law. In the event of such a breach by the applicant or EPN User, the Corporation and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages hereunder.

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