

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-93670; File No. SR-FICC-2021-008)

November 24, 2021

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Make Certain Revisions and Clarifications to the Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 15, 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. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of modifications to the FICC Government Securities Division (“GSD”) Rulebook (“GSD Rules”), the FICC Mortgage-Backed Securities Division (“MBSD”) Clearing Rules (“MBSD Rules”) and the FICC MBSD EPN Rules (“EPN Rules,” and together with the GSD Rules and the MBSD Rules, the “Rules”) to (1) incorporate in the Rules the affirmative undertakings that Members

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4).

currently make in onboarding membership agreements; (2) incorporate into the Rules the governing law of agreements and other documents provided to FICC pursuant to the Rules; (3) clarify FICC's ability to rely on electronic signatures on agreements and other documents provided to FICC pursuant to the Rules; and (4) clarify in the GSD Rules and MBSD Rules that Members shall appoint a duly authorized representative in connection with their membership, and remove the requirement that FICC approve the form of power of attorney or resolutions of the Member's board of directors that evidences such authorization, as described in greater detail below.<sup>5</sup>

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.

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<sup>5</sup> Capitalized terms not defined herein are defined in the GSD Rules, MBSD Rules and EPN Rules, as applicable, available at <https://www.dtcc.com/legal/rules-and-procedures>. GSD and MBSD have several membership categories. For ease of description, unless otherwise indicated by the context, the term "Member" is used to refer to all membership categories.

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

1. Purpose

FICC is proposing amendments that would clarify, simplify and improve the disclosures in the Rules, primarily related to onboarding and other membership documentation between FICC and its Members. FICC, along with its affiliates, The Depository Trust Company and National Securities Clearing Corporation, has recently completed a review of the templates of onboarding agreements and other documents that are provided to FICC in connection with a firm's application for membership and the templates of agreements and documents Members may provide to FICC during the course of their membership pursuant to the Rules. In connection with this review, FICC is proposing to make certain revisions and clarifications to the Rules.

More specifically, the proposed rule changes would (1) incorporate in the Rules the affirmative undertakings that Members currently make in onboarding membership agreements; (2) incorporate into the Rules the governing law of agreements and other documents provided to FICC pursuant to the Rules; (3) clarify FICC's ability to rely on electronic signatures on agreements and other documents provided to FICC pursuant to the Rules; and (4) clarify in the GSD Rules and MBSD Rules that Members shall appoint a duly authorized representative in connection with their membership, and remove the requirement that FICC approve the form of power of attorney or resolutions of the Member's board of directors that evidences such authorization, as described in greater detail below.

*Proposed Revisions to Incorporate Member Undertakings into the Rules*

FICC is proposing to revise GSD Rules 2A, 3A and 4(d), MBSD Rules 2A and 3, and EPN Rule 1 of Article III, to incorporate affirmative undertakings that Members currently make in their onboarding membership agreements.<sup>6</sup> Each of these Rules currently provide that an applicant for membership with FICC shall sign and deliver to FICC an agreement under which the applicant would agree to the affirmative undertakings that are listed in those Rules. These undertakings include, for example, to abide by the Rules and be bound by all the provisions thereof, and to pay any amounts that become payable by the Member to FICC pursuant to the Rules.<sup>7</sup>

To simplify and standardize the membership onboarding documentation, FICC is proposing to revise each of the Rules that includes these undertakings to state directly that Members agree to the undertakings listed in that Rule. In connection with this proposed change, FICC would remove these undertakings from the template membership agreements, which already provide that Members are bound by the Rules.

*Proposed Revisions to Rules Regarding Governing Law*

FICC is proposing to revise GSD Rule 38, MBSD Rule 29 and EPN Rule 9 of Article V, each of which currently state that the Rules are governed by New York law.<sup>8</sup> The proposed change would revise these Rules to include a statement that all agreements and other documents that are entered into between FICC and its Members are also

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<sup>6</sup> See Section 7 of GSD Rule 2A, Section 4 of GSD Rule 3A and Section 13 of GSD Rule 4(d); Section 5 of MBSD Rule 2A and MBSD Rule 3(A)(d)(i); and Section 3 of EPN Rule 1 of Article III (All references to “Articles” herein shall be referring to Articles of the EPN Rules.); id.

<sup>7</sup> Id.

<sup>8</sup> Id.

governed by New York law, unless otherwise expressly provided. Currently, agreements and other documents entered into between FICC and its Members either include a governing law provision or are governed by New York law through the application of both (i) GSD Rule 38, MBSD Rule 29 and EPN Rule 9 of Article V, which provide that the rights and obligations under the Rules are governed by New York law, and (ii) the FICC membership agreements, which provide that the Rules (including the Rules referenced in this paragraph) govern the matters and transactions between FICC and its Members.

This proposed change would both clarify the governing law of the agreements and other documents entered into between FICC and its Members pursuant to the Rules, and would allow FICC to simplify those documents by removing the governing law provisions in such documents.

*Proposed Revisions to Rules Regarding FICC's Reliance on Electronic Signatures*

FICC is proposing to revise GSD Rule 32, MBSD Rule 24 and EPN Rule 15 of Article V, each of which currently lists the circumstances in which FICC would rely on an electronic signature.<sup>9</sup> The proposed revisions to these Rules would clarify that FICC may rely on an electronic signature with respect to any and all agreements and other documents delivered pursuant to the Rules. FICC would also remove reference to the circumstances in which it would accept an electronic signature, to make clear that FICC would do so in any circumstances. The proposed revisions would clarify and modernize the language in these Rules, which still refer to outdated modes of electronic

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<sup>9</sup> Id.

communication, such as telex, and would align the language in this Rule to language used in the New York Electronic Signatures and Records Act.<sup>10</sup>

*Proposed Revisions to Requirements Related to Members' Authorized Representatives*

FICC is proposing to revise Section 1 of GSD Rule 40 and Section 1 of MBSD Rule 31, which describe Members' requirement to appoint an authorized representative in connection with their membership with FICC.<sup>11</sup> Currently, these Rules provide that a Member may designate an authorized representative that is not either a general partner or an officer of the Member by either a power of attorney or resolutions of the Member's board of directors, and requires such power of attorney and resolutions be in a form approved by FICC.<sup>12</sup> These Rules also require Members to provide FICC with the signatures of individuals who are authorized representatives for purposes of conducting business with FICC.<sup>13</sup>

In order to simplify the onboarding membership requirements, FICC is proposing to amend these Rules to clarify that Members must appoint a duly authorized representative, and to remove references to a power of attorney or resolutions of the Member's board of directors. The proposed change would also remove the requirement that FICC approve the form of power of attorney or resolutions of the Member's board of directors that evidences the due authorization of that representative. Finally, FICC is

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<sup>10</sup> N.Y. State Tech. Law § 304(2) (McKinney 2021).

<sup>11</sup> Supra note 5.

<sup>12</sup> Id.

<sup>13</sup> Id.

proposing to remove the requirement that Members provide FICC with the signatures of representatives who are authorized to conduct business with FICC.<sup>14</sup>

## 2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires that the rules of FICC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions.<sup>15</sup> FICC believes the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act because such changes would clarify and improve the transparency of the Rules and would allow FICC to simplify the membership agreements and other documentation provided to it by Members pursuant to the Rules.

More specifically, the proposed changes would make clarifications to the Rules regarding (i) FICC's ability to rely on electronic signatures on agreements and other documents provided to it pursuant to the Rules; and (ii) Members' duly authorized representatives in connection with their memberships. The proposed changes would also update the Rules in order to allow FICC to simplify the onboarding and other membership agreements and documents by incorporating in the Rules (1) the governing law of agreements and other documents provided to FICC pursuant to the Rules; and (2) the affirmative undertakings that Members currently make in onboarding membership agreements.

By enhancing the clarity and transparency of the Rules, and allowing FICC to simplify the membership agreements and other documents, the proposed changes would

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<sup>14</sup> Id.

<sup>15</sup> 15 U.S.C. 78q-1(b)(3)(F).

allow Members to more efficiently and effectively conduct their business in accordance with the Rules, which FICC believes would promote the prompt and accurate clearance and settlement of securities transactions. As such, FICC believes that the proposed changes would be consistent with Section 17A(b)(3)(F) of the Act.<sup>16</sup>

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

FICC does not believe the proposed rule changes would impact competition. The proposed rule changes would merely enhance the clarity and transparency of the Rules and would simplify the documentation that is provided to FICC by Members pursuant to the Rules. Therefore, the proposed changes would not affect FICC's operations or the rights and obligations of membership. As such, FICC believes the proposed rule changes would not have any impact on competition.

(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. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

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<sup>16</sup> Id.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at [tradingandmarkets@sec.gov](mailto:tradingandmarkets@sec.gov) or 202-551-5777.

FICC reserves the right to not respond to any comments received.

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

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

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<sup>17</sup> 15 U.S.C 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2021-008 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-2021-008. 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-2021-008 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.<sup>19</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).