

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98335; File No. SR-FICC-2023-013)

September 8, 2023

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Recovery and Wind-down Plan

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 September 1, 2023, 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. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to the Recovery and Wind-down Plan to reflect business and product developments that have taken place since the time it was last amended, and make certain changes to improve the clarity of the Plan and make other updates and technical revisions, as described in greater detail below.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4).

⁵ Capitalized terms not defined herein are defined in the FICC Government Securities Division (“GSD”) Rulebook (the “GSD Rules”) or the FICC Mortgage-Backed Securities Division (“MBSD”) Clearing Rules (the “MBSD Rules,” and

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

Executive Summary

The R&W Plan was adopted in August 2018⁶ and is maintained by FICC for compliance with Rule 17Ad-22(e)(3)(ii) under the Act.⁷ This section of the Act requires registered clearing agencies to, in short, establish, implement and maintain plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses. The Plan is intended to be used by the Board and FICC management in the event FICC encounters

collectively with the GSD Rules, the “Rules”), available at www.dtcc.com/legal/rules-and-procedures, or in the Recovery & Wind-down Plan of FICC (the “R&W Plan” or “Plan”).

⁶ See Securities Exchange Act Release Nos. 83973 (Aug. 28, 2018), 83 FR 44942 (Sep. 4, 2018) (SR-FICC-2017-021); and 83954 (Aug. 27, 2018), 83 FR 44361 (Aug. 30, 2018) (SR-FICC-2017-805).

⁷ 17 CFR 240.17Ad-22(e)(3)(ii). FICC is a “covered clearing agency” as defined in Rule 17Ad-22(a)(5) under the Act and must comply with paragraph (e) of Rule 17Ad-22.

scenarios that could potentially prevent it from being able to provide its critical services to the marketplace as a going concern.

The R&W Plan is comprised of two primary sections: (i) the “Recovery Plan,” that sets out the tools and strategies to enable FICC to recover, in the event it experiences losses that exceed its prefunded resources, and (ii) the “Wind-down Plan,” that describes the tools and strategies to be used to conduct an orderly wind-down of FICC’s business in a manner designed to permit the continuation of FICC’s critical services in the event that its recovery efforts are not successful.

The purpose of the rule proposal is to amend the R&W Plan to reflect business and product developments that have taken place since the time it was last amended,⁸ make certain changes to improve the clarity of the Plan and make other updates and technical revisions.

FICC believes that by helping to ensure that the R&W Plan reflects current business and product developments, providing additional clarity, and making necessary grammatical corrections, that the proposed rule change would help it continue to maintain the Plan in a manner that supports the continuity of FICC’s critical services and enables its Members and Limited Members to maintain access to FICC’s services through the transfer of its membership in the event FICC defaults or the Wind-down Plan is ever triggered by the Board.

Background

⁸ See Securities Exchange Act Release No. 91430 (Mar. 29, 2021), 86 FR 17432 (Apr. 2, 2021) (SR-FICC-2021-002).

The R&W Plan is managed by the Office of Recovery & Resolution Planning (referred to in the Plan as the “R&R Team”) of FICC’s parent company, the Depository Trust & Clearing Corporation (“DTCC”),⁹ on behalf of FICC, with review and oversight by the DTCC Management Committee and the Board. In accordance with the SEC’s Approval Order covering the Plan,¹⁰ the Board, or such committees as may be delegated authority by the Board from time to time, is required to review and approve the R&W Plan biennially and would also review and approve any changes that are proposed to the R&W Plan outside of the biennial review. FICC completed its most recent biennial review in 2022. The proposed rule change reflects amendments proposed to the Plans resulting from that review, which are described in greater detail below. None of the proposed changes modify FICC’s general objectives and approach with respect to its recovery and wind-down strategy as set forth under the current Plan.

A. Proposed Amendments to the R&W Plan

FICC is proposing the changes to the following sections of the Plan based upon business updates and product developments that have occurred since the Plan was last amended.¹¹

⁹ DTCC operates on a shared service model with respect to FICC and its other affiliated clearing agencies, National Securities Clearing Corporation (“NSCC”) and The Depository Trust Company (“DTC”). 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, NSCC and DTC (collectively, the “Clearing Agencies”).

¹⁰ Supra note 6.

¹¹ Supra note 8.

Section 2.3 (MBSD) describes the way in which TBA transactions are processed by FICC. For purposes of completeness, the proposed rule change would augment the existing description to add that the processing consists of the following steps: trade matching, novation, the Do Not Allocate (“DNA”) process, TBA Netting, electronic pool notification (“EPN”) allocation, pool comparison, Pool Netting, pool conversion and settlement. Similarly, in the paragraph of this section that describes the TBA Netting process,¹² the description would be expanded to include that net positions created by the TBA Netting process are referred to as the settlement balance order (“SBO”) position,¹³ which constitutes settlement obligations against which Members will submit pool information for the Pool Netting process or offset such SBO position with other SBO position or trade-for-trade transaction, as applicable, through the DNA process.¹⁴

Section 2.4 (Intercompany Arrangements) describes how corporate support services are provided to FICC from DTCC and DTCC’s other subsidiaries, through intercompany agreements under a shared services model. This section includes a table, (Facilities, Table 2-B), that lists each of the DTCC facilities utilized by the Clearing Agencies and indicates whether the facility is owned or leased. FICC proposes to update this table to add Washington D.C., London, UK, and McLean, Virginia as additional DTCC facility locations.

¹² See MBSD Rule 6 (TBA Netting).

¹³ The term “SBO” means the settlement balance orders that constitute the net positions of a Clearing Member as a result of the TBA Netting process.

¹⁴ The DNA process gives Members the ability to offset TBA obligations with other TBA obligations meaning that, SBO positions and/or trade-for-trade transactions may be offset with other SBO positions and/or trade for-trade transactions, as applicable, subject to certain restrictions.

Section 2.5 (FMI Links)¹⁵ describes some of the key financial market infrastructures (“FMIs”), both domestic and foreign, that FICC has identified as critical “links.”¹⁶ As set out in this section of the Plan, the inventory of FICC’s links is maintained by DTCC’s Systemic Risk Office (“SRO”) and the SRO has set forth a set of practices and protocols for managing and reviewing the various risks and controls associated with clearing agency links. Based on a change to the SRO Clearing Agency Links-Risk Review Procedures, the proposal would clarify that in addition to approval by the Chief Systemic Risk Officer, the inventory of clearing agency links is also subject to the approval of a Deputy General Counsel of the General Counsel’s Office.

Section 3 (Critical Services) defines the criteria for classifying certain of FICC’s services as “critical,”¹⁷ and identifies such critical services and the rationale for their classification. The identification of FICC’s critical services is important for evaluating

¹⁵ For purposes of consistency, under the proposed rule change all references to “FMI Links” would be revised to refer to these as “Clearing Agency Links.”

¹⁶ As defined in Rule 17Ad-22(a)(8) under the Act, a link “means, for purposes of paragraph (e)(20) of Rule 17Ad-22, a set of contractual and operational arrangements between two or more clearing agencies, financial market utilities, or trading markets that connect them directly or indirectly for the purposes of participating in settlement, cross margining, expanding their services to additional instruments or participants, or for any other purposes material to their business.” 17 CFR 240.17Ad-22(a)(8).

¹⁷ The criteria that is used to identify a FICC service or function as critical includes consideration as to whether (1) there is a lack of alternative providers or products; (2) the inability of FICC to act as a central counterparty through either Division would increase Members’ credit risk and disrupt their ability to initiate new transactions.; (3) The failure or disruption of the multilateral netting performed by each FICC Division could materially and negatively impact the volume of financial transactions and the liquidity of the U.S. Fixed Income markets; and (4) the service is interconnected with other participants and processes within the U.S. financial system (for example, with other FMIs, settlement banks, broker-dealers, and exchanges).

how the recovery tools and the wind-down strategy would facilitate and provide for the continuation of FICC’s critical services to the markets it serves. Included in this section are two tables (Table 3-B: GSD Critical Services and Table 3-C: MBSD Critical Services) that list each of the services, functions or activities that FICC has identified as “critical” based on the applicability of the criteria. The proposed rule change would update Table 3-B to enhance the description of the GSD’s “Sponsored Membership Service” by adding at the end of the description that this service is comprised of two available offerings, the Sponsored DVP service and the Sponsored GC Service.¹⁸

Section 5.2.4 (Recovery Corridor and Recovery Phase) outlines the early warning indicators to be used by FICC to evaluate its options and potentially prepare to enter the “Recovery Phase,” which phase refers to the actions to be taken by FICC to restore its financial resources and avoid a wind-down of its business. This section contains descriptions of potential stress events that could lead to recovery, and several early warning indicators and metrics that FICC has established to evaluate its options and potentially prepare to enter the Recovery Phase. These indicators, which are referred to in the Recovery Plan as recovery corridor indicators (“Corridor Indicators” or

¹⁸ FICC’s Sponsored DVP service offers eligible clients the ability to lend cash or eligible collateral via FICC-cleared DVP repo transactions in U.S. Treasury and Agency Securities on an overnight and term basis, as well as outright purchases and sales of such securities, to be settled on a Delivery-vs-Payment (DVP) basis. FICC’s Sponsored General Collateral service offers eligible clients the ability to execute general collateral repo transactions (in the same asset classes currently eligible for Netting Members to transact in via FICC’s existing GCF Repo® Service) with each other and settle such repo transactions on the tri-party repo platform of BNY Mellon.

“Indicator(s)”¹⁹ are calibrated against FICC’s financial resources and are designed to give FICC the ability to replenish financial resources, typically through business-as-usual tools applied prior to entering the Recovery Phase. Included in this section is a table (Table 5-A: Corridor Indicators) that identifies for each Indicator (i) how it is measured, (ii) the basis for the evaluation of the status of the Indicator, (iii) the type of metrics used for determining the status of the deterioration or improvement of the Indicator, and (iv) “Corridor Actions & Escalation,” which are those steps that may be taken to improve the status of the Indicator and the management escalations required to authorize those steps. The proposed rule change would make the following clarifications to Table 5-A.

First, for purposes of providing additional context on the applicable measurement, the proposed rule change would clarify the “Hedge Effectiveness” Indicator²⁰ set out in Table 5-A. Specifically, the language in the measurement column for this Indicator would be revised to clarify that if the hedge effectiveness measures are outside of the designated metrics due to certain types of factors (e.g., mismatch in portfolio profit and loss (“P&L”) and hedge P&L due to timing of initiating the hedge or the portfolio), management would document the performance and only escalate to the Board Risk Committee and Management Risk Committee if the measurement status deteriorates in a material respect.

¹⁹ The majority of the Corridor Indicators, as identified in the Recovery Plan, relate directly to conditions that may require FICC to adjust its strategy for hedging and liquidating a defaulting Member’s portfolio, and any such changes would include an assessment of the status of the Corridor Indicators.

²⁰ Hedging is a risk management strategy that would be employed when executing the liquidation of a defaulting Member’s portfolio to potentially help reduce the risk of loss of an existing position.

Second, for the “Retirements/ Trade Volume Reductions” Indicator,²¹ a clarification would be made to identify Client Account Management and FICC Global Business Operations as the internal groups responsible for measurement of the applicable deterioration and improvement Indicator metrics.

B. Other Updates, Clarifications and Technical Revisions

FICC is also proposing to make other updates and technical revisions to the Plan. These technical revisions would, for example, make grammatical corrections, update the names of certain FICC internal groups, and clarify the description of internal organizations, without changing the substantive statements being revised.

For example, in Section 2.4, Table 2-A (SIFMU Legal Entity Structure and Intercompany Agreements), for purposes of clarifying the full scope of services provided by FICC’s affiliate, DTC, the description of DTC’s services would be revised from “Underwriting, Securities Processing, Corporate Actions,” to “Asset Services.” Some other examples include: (i) a revision would be made throughout the Plan to reflect an internal name change from DTCC’s “Operational Risk Management” to “Operational Risk,” and add a new internal organization, “Embedded Risk Management,”²² (ii) all references to “FMI Links” would be revised to refer to these as “Clearing Agency Links,” and (iii) in the section covering DTCC facilities, the name of the DTCC legal entity that

²¹ The Retirements/ Transaction Reductions indicator measures Member terminations or curtailment of transactions that impact the financial viability of FICC.

²² The Embedded Risk Management group supports the R&R Team. For example, they may assist in the identification of new initiatives, processes, or product developments that may impact FICC’s R&W Plan.

is the holder of the lease for the Manila location would be changed from “DTCC” to “DTCC Manila.”

FICC believes the proposed updates and technical revisions would improve the clarity and accuracy of the Plan and, therefore, would help facilitate the execution of Plan, if necessary.

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 the amendments to the R&W Plan are consistent with Section 17A(b)(3)(F) of the Act²³ and Rule 17Ad-22(e)(3)(ii) under the Act²⁴ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of FICC be designed to promote the prompt and accurate clearance and settlement of securities transactions. As described above, the proposed rule change would update the R&W Plan to reflect business and product developments and make certain technical corrections. By helping to ensure that the R&W Plan reflects current business and product developments, and providing additional clarity, FICC believes that the proposed rule change would help it continue to maintain the Plan in a manner that supports the continuity of FICC’s critical services and enables its Participants and Pledges to maintain access to FICC’s services through the transfer of its membership in the event FICC defaults or the Wind-down Plan is ever triggered by the Board. Further, by facilitating the continuity of its critical

²³ 15 U.S.C. 78q-1(b)(3)(F).

²⁴ 17 CFR 240.17Ad-22(e)(3)(ii).

clearance and settlement services, FICC believes the Plan and the proposed rule change would continue to promote the prompt and accurate clearance and settlement of securities transactions. Therefore, FICC believes the proposed amendments to the R&W Plan are consistent with the requirements of Section 17A(b)(3)(F) of the Act.

Rule 17Ad-22(e)(3)(ii) under the Act requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.²⁵

Specifically, the Recovery Plan defines the risk management activities, stress conditions and indicators, and tools that FICC may use to address stress scenarios that could eventually prevent it from being able to provide its critical services as a going concern. Through the framework of the Crisis Continuum, the Recovery Plan addresses measures that FICC may take to address risks of credit losses and liquidity shortfalls, and other losses that could arise from a Participant default. The Recovery Plan also addresses the management of general business risks and other non-default risks that could lead to losses. The Wind-down Plan would be triggered by a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning FICC to viability as a going concern. Once triggered, the Wind-down Plan sets forth clear mechanisms for the transfer of FICC's membership and business and is designed to

²⁵ Id.

facilitate continued access to FICC’s critical services and to minimize market impact of the transfer. By establishing the framework and strategy for the execution of the transfer and wind-down of FICC in order to facilitate continuous access to its critical services, the Wind-down Plan establishes a plan for the orderly wind-down of FICC.

As described above, the proposed rule change would update the R&W Plan to reflect business and product developments and make certain technical corrections. By ensuring that material provisions of the Plan are current, clear, and technically correct, FICC believes that the proposed amendments are designed to support the maintenance of the Plan for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, and, as such, meets the requirements of Rule 17Ad-22(e)(3)(ii) under the Act.²⁶ Therefore, the proposed changes would help FICC to maintain the Plan in a way that continues to be consistent with the requirements of Rule 17Ad-22(e)(3)(ii).

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

FICC does not believe that the proposed rule change would have any impact, or impose any burden, on competition. FICC does not anticipate that the proposal would affect its day-to-day operations under normal circumstances, or in the management of a typical Member default scenario or non-default event. The R&W Plan was developed and documented in order to satisfy applicable regulatory requirements, as discussed above. The proposal is intended to enhance and update the Plan to ensure it is clear and remains current in the event it is ever necessary to be implemented. The proposed revisions would not affect any changes to the overall structure or operation of the Plan or FICC’s recovery

²⁶ Id.

and wind-down strategy as set forth under the current Plan. As such, FICC believes the proposal would not have any impact, or impose any burden, 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, FICC will amend this filing to publicly file such comments as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting written 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.

All prospective commenters should follow the Commission's instructions on How to Submit Comments, available at 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 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)²⁷ of the Act and paragraph (f)²⁸ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-FICC-2023-013 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-FICC-2023-013. This file number should be included on the subject line if email is used. To help the Commission process

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f).

and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to File Number SR-FICC-2023-013 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Sherry R. Haywood,
Assistant Secretary.

²⁹ 17 CFR 200.30-3(a)(12).