

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101194; File No. SR-FICC-2024-009)

September 26, 2024

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement

I. Introduction

On June 12, 2024, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-FICC-2024-009 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder to modify FICC’s Government Securities Division (“GSD”) Rulebook (“GSD Rules”) as it relates to the adoption of a requirement for its direct participants to submit for clearance and settlement all eligible secondary market transactions in U.S. Treasury securities to which such direct participant is a counterparty.³ The Proposed Rule Change was published for public comment in the Federal Register on July 1, 2024.⁴ The Commission has received comments regarding the substance of the changes proposed in the Proposed Rule Change.⁵

On August 16, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁶ the Commission designated a longer period within which to approve, disapprove, or institute

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing, infra note 4, at 89 FR 54602.

⁴ Securities Exchange Act Release No. 100417 (June 25, 2024), 89 FR 54602 (July 1, 2024) (File No. SR-FICC-2024-009) (“Notice of Filing”).

⁵ Comments on the Proposed Rule Change are available at <https://www.sec.gov/comments/sr-ficc-2024-009/srficc2024009.htm>.

⁶ 15 U.S.C. 78s(b)(2).

proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁷

The Commission is instituting proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁸ to determine whether to approve or disapprove the Proposed Rule Change.

II. Summary of the Proposed Rule Change

A. Background

FICC, through GSD, serves as a central counterparty and provider of clearance and settlement services for the U.S. government securities markets, including U.S. Treasury securities. GSD's central counterparty services are available directly to entities that are approved to be Netting Members⁹ and indirectly to other market participants through its indirect access models.

On December 13, 2023, the Commission adopted amendments to the standards applicable to covered clearing agencies for U.S. Treasury securities, such as FICC,¹⁰ requiring, among other things, that such clearing agency establish objective, risk-based, and publicly disclosed criteria for participation which (i) require that any direct

⁷ Securities Exchange Act Release No. 100693 (Aug. 12, 2024), 89 FR 66746 (Aug. 16, 2024) (File No. SR-FICC-2024-009).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ The GSD Rules are available at https://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf. Terms not otherwise defined herein are defined in the GSD Rules.

¹⁰ A "covered clearing agency" is, among other things, a registered clearing agency that provides the services of a central counterparty, and a central counterparty is a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer. 17 CFR 240.17Ad-22(a); see also 15 U.S.C. 78c(a)(23) (defining a clearing agency). FICC is a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q-1), and it acts as a central counterparty.

participant of such covered clearing agency submit for clearance and settlement all of the eligible secondary market transactions to which they are a counterparty; and (ii) identify and monitor its direct participants' submission of eligible secondary market transactions to which they are a counterparty, including how the covered clearing agency would address a failure to submit transactions in accordance with this requirement.¹¹ According to FICC, the Proposed Rule Change is designed to meet these new requirements and to further update FICC's risk management framework, including its initial and ongoing participation criteria, and requirements relating to financial resources, creditworthiness, and operational capability, to limit the risks a Netting Member may present to FICC and the other Netting Members by ensuring, among other things, that applicants to be Netting Members have the financial and operational capabilities to meet the obligations of membership on an ongoing basis.¹²

B. Proposed Changes

First, the Proposed Rule Change would adopt an ongoing membership requirement that all Netting Members submit for clearance and settlement eligible secondary market transactions to which they are a party and would specify the scope of this requirement by defining "Eligible Secondary Market Transactions," adopting such and related definitions from the Treasury Clearing Rules.¹³ Specifically, under FICC's proposed rules, an Eligible Secondary Market Transaction would include: a repurchase or

¹¹ 17 CFR 240.17ad-22(e)(18)(iv)(A) and (B). See Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) ("Adopting Release," and the rules adopted therein referred to herein as "Treasury Clearing Rules").

¹² See Notice of Filing, supra note 4, at 54604.

¹³ Supra note 11. See also 17 CFR 240.17ad-22(a).

reverse repurchase agreement collateralized by U.S. Treasury securities in which one of the counterparties is a direct participant; a purchase or sale between a direct participant and any counterparty, if the direct participant of the covered clearing agency brings together multiple buyers and sellers using a trading facility (such as a limit order book) and is a counterparty to both the buyer and seller in two separate transactions; and a purchase or sale between a direct participant and a registered broker-dealer, government securities broker, or government securities dealer. Under FICC's proposed rules, an Eligible Secondary Market Transaction would not include: any purchase or sale transaction in U.S. Treasury securities or repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities in which one counterparty is a central bank, a sovereign entity, an international financial institution, or a natural person; any repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities in which one counterparty is a covered clearing agency providing central counterparty services or a derivatives clearing organization, or is regulated as a central counterparty in its home jurisdiction; any repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities in which one counterparty is a state or local government; or any repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities entered into between a direct participant and an affiliated counterparty provided that the affiliated counterparty submit for clearance and settlement all other repurchase or reverse repurchase agreements collateralized by U.S. Treasury securities to which the affiliate is a party. In addition, FICC proposes conforming certain aspects of those defined terms to the GSD Rules to provide Netting Members with clarity on the scope of this trade submission requirement. FICC states that these changes would be consistent with and

implement the changes to Rule 17Ad-22(e)(18)(iv)(A)¹⁴ regarding the requirement for its direct participants to submit for clearance and settlement all Eligible Secondary Market Transactions.¹⁵

Second, the Proposed Rule Change would adopt provisions to enable FICC to identify and monitor Netting Members' ongoing compliance with the proposed trade submission requirement. These provisions would include affirmative obligations of Netting Members to notify FICC of non-compliance and confirm their ongoing compliance with this requirement. These would consist of requirements for Netting Members to provide FICC annual attestation regarding ongoing compliance with the trade submission requirement, and to conduct an independent review of ongoing compliance with the trade submission requirement on a triennial basis to be provided to FICC and the Netting Member's most senior governing body. These provisions would also provide FICC with the authority to request information or review a Netting Member's books and records to monitor and verify, as needed, such compliance.

The Proposed Rule Change would also adopt disciplinary measures that FICC would take if a Netting Member fails to meet its obligations under the new rules, which would include continuing fines, to be incorporated into the GSD Fine Schedule, until the failure has been remediated and notifications to applicable regulatory authorities. FICC states that these changes would facilitate its ability to identify and monitor the trade submission requirement, as required of FICC under Rule 17Ad-22(e)(18)(iv)(B)¹⁶

¹⁴ 17 CFR 240.17ad-22(e)(18)(iv)(A).

¹⁵ See Notice of Filing, supra note 4, at 54604.

¹⁶ 17 CFR 240.17ad-22(e)(18)(iv)(B).

regarding the identification and monitoring of its direct participants' submission of Eligible Secondary Market Transactions for clearing.¹⁷

Lastly, FICC proposes to amend certain of the initial qualifications for direct membership with GSD and the ongoing membership obligations of Netting Members. The changes related to initial membership requirements include explicitly requiring adequate liquidity through adequate resources; allowing FICC to review a Guarantor when an applicant or Member relies on such; requiring applicants to provide FICC with a business plan that demonstrates the applicant's ability to meet FICC requirements and that they have at least one year of "operating and management history and outlook" or, absent one year, permitting FICC to determine whether the applicant has personnel with sufficient operational and financial background and experience; and clearly stating that FICC can deny an applicant's membership under certain circumstances, and if denied under any circumstance, not permit reapplication until the applicant has adequately addressed the reason for the denial. The changes related to ongoing membership requirements relate to the production of financial statements by Affiliates of a Member; Member's responses to FICC's annual and periodic due diligence information requests; Member's notifications to FICC if the Member breaches its GSD membership standards; and an adequate assurances condition on Funds-Only Settling Bank Members that could limit the number of Netting Members for which the bank provides settlement services.

FICC states that these changes would clarify and strengthen membership standards to help mitigate the credit exposure that Netting Members present to FICC and, thus, continue to promote the safety and soundness of FICC, its Members, and the

¹⁷ See Notice of Filing, supra note 4, at 54606.

industry it serves, and that these changes would be consistent with FICC's authority under Section 17A(b)(4)(B) of the Exchange Act.¹⁸

III. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the Proposed Rule Change should be approved or disapproved.¹⁹ Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, which would provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,²⁰ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Exchange Act²¹ and the rules thereunder, including the following provisions:

¹⁸ 15 U.S.C. 78q-1(b)(4)(B). *See* Notice of Filing, *supra* note 4, at 54608.

¹⁹ 15 U.S.C. 78s(b)(2)(B).

²⁰ *Id.*

²¹ 15 U.S.C. 78q-1.

- Section 17A(b)(3)(F) of the Exchange Act,²² which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions, as well as to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and, in general, to protect investors and the public interest;
- Section 17A(b)(3)(G) of the Exchange Act,²³ which requires that the rules of a clearing agency provide that its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction;
- Section 17A(b)(3)(I) of the Exchange Act,²⁴ which requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate;
- Section 17A(b)(4)(B) of the Exchange Act,²⁵ which requires that a registered clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency, and may examine and verify the qualifications of an

²² 15 U.S.C. 78q-1(b)(3)(F).

²³ 15 U.S.C. 78q-1(b)(3)(G).

²⁴ 15 U.S.C. 78q-1(b)(3)(I).

²⁵ 15 U.S.C. 78q-1(b)(4)(B).

applicant to be a participant in accordance with procedures established by the rules of the clearing agency;

- Rule 17ad-22(e)(18)(i) under the Exchange Act,²⁶ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities;
- Rule 17ad-22(e)(18)(ii) under the Exchange Act,²⁷ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency;
- Rule 17ad-22(e)(18)(iii) under the Exchange Act,²⁸ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which monitor compliance with such participation requirements on an ongoing basis;

²⁶ 17 CFR 240.17ad-22(e)(18)(i).

²⁷ 17 CFR 240.17ad-22(e)(18)(ii).

²⁸ 17 CFR 240.17ad-22(e)(18)(iii).

- Rule 17ad-22(e)(18)(iv)(A) under the Exchange Act,²⁹ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which, when the covered clearing agency provides central counterparty services in transactions in U.S. Treasury securities, require that any direct participant of such covered clearing agency submit for clearance and settlement all of the eligible secondary market transactions to which such direct participant is a counterparty;
- Rule 17ad-22(e)(18)(iv)(B) under the Exchange Act,³⁰ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which, when the covered clearing agency provides central counterparty services in transactions in U.S. Treasury securities, identify and monitor its direct participants' submission of transactions for clearing as required by Rule 17ad-22(e)(18)(iv)(A), including how the clearing agency would address a failure to submit transactions in accordance with Rule 17ad-22(e)(18)(iv)(A); and
- Rule 17ad-22(e)(23)(ii) under the Exchange Act,³¹ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide sufficient information to enable

²⁹ 17 CFR 240.17ad-22(e)(18)(iv)(A).

³⁰ 17 CFR 240.17ad-22(e)(18)(iv)(B).

³¹ 17 CFR 240.17ad-22(e)(23)(ii).

participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F), (G), and (I), and (b)(4)(B)³² and Rules 17ad-22(e)(18)(i), (ii), (iii), (iv)(A) and (B), and (e)(23)(ii)³³ of the Exchange Act, or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4(g) under the Exchange Act,³⁴ any request for an opportunity to make an oral presentation.³⁵

The Commission asks that commenters address the sufficiency of FICC's statements in support of the Proposed Rule Change, which are set forth in the Notice of

³² 15 U.S.C. 78q-1(b)(3)(F), 15 U.S.C. 78q-1(b)(3)(G), 15 U.S.C. 78q-1(b)(3)(I), and 15 U.S.C. 78q-1(b)(4)(B).

³³ 17 CFR 240.17Ad-22(e)(18)(i), 17 CFR 240.17Ad-22(e)(18)(ii), 17 CFR 240.17Ad-22(e)(18)(iii), 17 CFR 240.17Ad-22(e)(18)(iv)(A), 17 CFR 240.17Ad-22(e)(18)(iv)(B), and 17 CFR 240.17Ad-22(e)(23)(ii).

³⁴ 17 CFR 240.19b-4(g).

³⁵ Section 19(b)(2) of the Exchange Act grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Filing³⁶ in addition to any other comments they may wish to submit about the Proposed Rule Change.

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 e-mail to rule-comments@sec.gov. Please include file number SR-FICC-2024-009 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-FICC-2024-009. 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 (<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

³⁶ See Notice of Filing, *supra* note 4.

p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's website (www.dtcc.com/legal/sec-rule-filings).

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-2024-009 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Vanessa A. Countryman,

Secretary.

³⁷ 17 CFR 200.30-3(a)(31).