

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73682; File No. SR-FICC-2014-09)

November 25, 2014

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend the Rules of the Government Securities Division and the Mortgage-Backed Securities Division Regarding the Default of Fixed Income Clearing Corporation

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 November 12, 2014, Fixed Income Clearing Corporation (“FICC” or “Corporation”) 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 FICC. 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 rules of the Government Securities Division (“GSD Rules”) of FICC and the rules of the Mortgage-Backed Securities Division (“MBSD Rules”) of FICC (each of GSD and MBSD, a “Division” of FICC) regarding a default by the Corporation.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

(1) Purpose

The purpose of this filing is to amend in certain respects the GSD Rules and the MBSD Rules regarding a default by the Corporation.

By way of background, in 2010, FICC received approval from the Securities and Exchange Commission ("SEC") to amend the GSD Rules to add Rule 22B (the "GSD Corporation Default Rule").³ Certain technical clarifying changes to the GSD Corporation Default Rule were subsequently filed by FICC with the SEC for immediate effectiveness in 2011.⁴

The GSD Corporation Default Rule was originally added to the GSD Rules to make explicit the close out netting that would be applied to obligations between FICC and its members in the event that FICC becomes insolvent or otherwise defaults on its obligations to its members, and, in doing so, provide clarity to member firms in their

³ See Securities Exchange Act Release No. 34-63038 (October 5, 2010), 75 FR 62899 (October 13, 2010) (SR-FICC-2010-04).

⁴ See Securities Exchange Act Release No. 34-64004 (March 2, 2011), 76 FR 12782 (March 8, 2011) (SR-FICC-2011-02).

application of balance sheet netting to their transactions at FICC under U.S. GAAP and in the calculation of their capital requirements on the basis of their net credit exposure to FICC under Basel Accord standards. A rule parallel to the GSD Corporation Default Rule was subsequently added as Rule 17A to the MBSB Rules⁵ (the “MBSB Corporation Default Rule”, and together with the GSD Corporation Default Rule, the “Corporation Default Rules”).

There are three general types of default covered by the Corporation Default Rules: voluntary proceedings defaults, involuntary proceedings defaults and non-insolvency related defaults.

With respect to voluntary proceedings defaults, FICC would be considered in default under the current Corporation Default Rules immediately upon the dissolution of the Corporation, the voluntary institution of proceedings by the Corporation seeking a judgment of insolvency or bankruptcy or other similar relief or the voluntary presentation by the Corporation of a petition for its winding up or liquidation.

With respect to involuntary proceedings defaults, FICC would be considered in default under the current Corporation Default Rules on the 91st calendar day after the judgment of insolvency or bankruptcy or the entry of an order for relief (or similar order) for FICC’s winding up or liquidation, or the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for all or substantially all of the Corporation’s assets, where such judgment, order or appointment, as applicable, remains unstayed throughout the 90 calendar day grace period.

⁵ See Securities Exchange Act Release No. 34-66550 (March 9, 2012), 77 FR 15155 (March 14, 2012) (SR-FICC-2008-01).

With respect to non-insolvency related defaults, FICC would, as a general matter, be considered in default under the current Corporation Default Rules on the 91st calendar day after it receives notice from a member of its failure to make an undisputed payment or delivery to such member that is required under the GSD Rules or the MBSD Rules, respectively, where such failure remains unremedied throughout the 90 calendar day grace period. However, the current Corporation Default Rules exclude from the scope of what can be considered a non-insolvency related default of the applicable Division of FICC: (1) failure to satisfy obligations to members in wind-down and defaulting members; (2) the satisfaction of obligations by alternate means provided for under the applicable Division's Rules; (3) failure of the other Division of FICC to satisfy an obligation to a member; and (4) failure to satisfy obligations as a result of an operational, technological or administrative error or impediment, provided that the Corporation possesses sufficient funds or assets to satisfy the obligations. Moreover, the grace period can be extended beyond 90 calendar days under the current Corporation Default Rules in a non-insolvency related default situation where a payment or delivery deadline has been suspended under the applicable Division's Rules, in which case the 90 calendar day grace period would commence on the date the Corporation receives notice from a member of its failure to make an undisputed payment or delivery on the later due date determined pursuant to the suspension.

In order to more closely align FICC's Corporation Default Rules with those of its peer central counterparties and to facilitate the participation of market participants, including registered investment companies, in FICC's services by providing members with further legal certainty regarding their rights with respect to a default by the

Corporation, FICC is proposing to modify the Corporation Default Rules as described below.

With respect to voluntary proceedings defaults, FICC is proposing to add as an additional type of voluntary proceeding default under the Corporation Default Rules the voluntary making by FICC of a general assignment for the benefit of creditors.

With respect to involuntary proceedings defaults, FICC is proposing to eliminate the 90 calendar day grace period such that FICC would be considered in an involuntary proceedings default immediately upon the judgment of insolvency or bankruptcy or the entry of an order for relief (or similar order) for FICC's winding-up or liquidation, or the appointment of a receiver, trustee or other similar official for FICC or substantially all of FICC's assets, provided that such receiver, trustee or other similar official is appointed pursuant to the federal securities laws, particularly Section 19(i) of the Act, or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

With respect to non-insolvency related defaults, FICC is proposing to reduce the grace period from 90 to 7 calendar days such that FICC would, as a general matter, be considered in a non-insolvency related default on the 8th calendar day after it receives notice from a member of its failure to make an undisputed payment or delivery to such member that is required under the GSD Rules or the MBSD Rules, respectively, provided that such failure remains unremedied throughout the 7 calendar day grace period. FICC is also proposing to remove the provisions of the Corporation Default Rules that provide for a potential extension of the grace period in a non-insolvency default situation where the deadline for a payment or delivery obligation of the Corporation has been suspended by the Corporation under the applicable Division's Rules, as well as the provisions of the

Corporation Default Rules that exclude from the scope of what can be considered a non-insolvency related default the failure of the Corporation to satisfy obligations based on an operational, technological or administrative error or impediment.

FICC is also proposing to add language to the definition of a “Corporation Default” in order to clarify that no other provision of the applicable Division’s Rules, including FICC’s authority under GSD Rule 42 (Suspension of Rules) and MBSD Rule 33 (Suspension of Rules in Emergency Circumstances), respectively, can override the definition of “Corporation Default” included in the Corporation Default Rules.

Proposed GSD Rule Changes

FICC is proposing to amend GSD Rule 22B – “Corporation Default” as follows:

Clause (b) is revised to clarify that no other provision of GSD’s Rules, including FICC’s authority under GSD Rule 42 (Suspension of Rules), can override the definition of “Corporation Default” included in GSD Rule 22B.

Clause (b)(i) is revised to reduce the grace period for a non-insolvency Corporation Default from 90 to 7 calendar days such that FICC would be considered in a non-insolvency Corporation Default on the 8th calendar day after it receives notice from a member of its failure to make an undisputed payment or delivery to such member that is required under the GSD Rules, provided that such failure remains unremedied throughout the 7 calendar day grace period and that none of the exclusions enumerated in subclauses (A), (B) and (C) from the scope of what is considered a non-insolvency Corporation Default are applicable.

Clause (b)(i) is also revised to remove subclause (D), which currently provides for a potential extension of the grace period in a non-insolvency Corporation Default where a

payment or delivery deadline has been suspended under GSD Rule 42, in which case the grace period would commence on the date the Corporation receives notice from a member of its failure to make an undisputed payment or delivery on the later due date determined pursuant to the suspension.

Clause (b)(i) is further revised to remove subclause (E), which currently excludes from the definition of a non-insolvency Corporation Default the failure of the Corporation to satisfy obligations based on an operational, technological or administrative error or impediment.

Clause (b)(ii)(B) is revised to add the voluntary making by FICC of a general assignment for the benefit of creditors as a type of voluntary Corporation Default for purposes of the GSD Corporation Default Rule.

Clause (b)(ii)(C) is revised to eliminate the 90 calendar day grace period for an involuntary Corporation Default such that FICC would be considered in an involuntary Corporation Default immediately upon the judgment of insolvency or bankruptcy or the entry of an order for relief (or similar order) for FICC's winding-up or liquidation.

Clause (b)(ii)(D) is similarly revised to eliminate the 90 calendar day grace period after the involuntary appointment of a receiver, trustee or other similar official for FICC or substantially all of FICC's assets, but is also revised to eliminate the references to an administrator, provisional liquidator, conservator or custodian being appointed and provide that a receiver, trustee or other similar official must be appointed pursuant to the federal securities laws or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act in order for such appointment to be considered an involuntary Corporation Default.

Proposed MBSD Rule Changes

FICC is proposing to amend the MBSD Rule 17A – “Corporation Default” as follows:

Clause (b) is revised to clarify that no other provision of MBSD’s Rules, including FICC’s authority under MBSD Rule 33 (Suspension of Rules in Emergency Circumstances), can override the definition of “Corporation Default” included in MBSD Rule 17A.

Clause (b)(i) is revised to reduce the grace period for a non-insolvency Corporation Default from 90 to 7 calendar days such that FICC would be considered in a non-insolvency Corporation Default on the 8th calendar day after it receives notice from a member of its failure to make an undisputed payment or delivery to such member that is required under the MBSD Rules, provided that such failure remains unremedied throughout the 7 calendar day grace period and that none of the exclusions enumerated in subclauses (A), (B) and (C) from the scope of what is considered a non-insolvency Corporation Default are applicable.

Clause (b)(i) is also revised to remove subclause (D), which currently provides for a potential extension of the grace period in a non-insolvency Corporation Default where a payment or delivery deadline has been suspended under MBSD Rule 33, in which case the grace period would commence on the date the Corporation receives notice from a member of its failure to make an undisputed payment or delivery on the later due date determined pursuant to the suspension.

Clause (b)(i) is further revised to remove subclause (E), which currently excludes from the definition of a non-insolvency Corporation Default the failure of the

Corporation to satisfy obligations based on an operational, technological or administrative error or impediment.

Clause (b)(ii)(B) is revised to add the voluntary making by FICC of a general assignment for the benefit of creditors as a type of voluntary Corporation Default for purposes of the MBSD Corporation Default Rule.

Clause (b)(ii)(C) is revised to eliminate the 90 calendar day grace period for an involuntary Corporation Default such that FICC would be considered in an involuntary Corporation Default immediately upon the judgment of insolvency or bankruptcy or the entry of an order for relief (or similar order) for FICC's winding-up or liquidation.

Clause (b)(ii)(D) is similarly revised to eliminate the 90 calendar day grace period after the involuntary appointment of a receiver, trustee or other similar official for FICC or substantially all of FICC's assets, but is also revised to eliminate the references to an administrator, provisional liquidator, conservator or custodian being appointed and provide that a receiver, trustee or other similar official must be appointed pursuant to the federal securities laws or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act in order for such appointment to be considered an involuntary Corporation Default.

(2) Statutory Basis

The proposed rule is consistent with Section 17A(b)(3)(F)⁶ of the Act and the rules and regulations promulgated thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions in that it will provide FICC members with further legal certainty regarding their rights with respect to a default by the

⁶ 15 U.S.C. 78q-1(b)(3)(F).

Corporation and, thereby, enable market participants, including registered investment companies, to avail themselves of the benefits of clearing through FICC.

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

FICC does not believe that the proposed rule change will have any impact, or impose any burden, on competition because it relates to changes to the Corporation Default Rules that would apply equally to all members of each Division of FICC.

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

Written comments relating to the proposed rule change have not yet been solicited or received. 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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FICC-2014-09 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-2014-09. 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 20549-1090 on official business days between the hours of 10:00

am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on FICC's website:

<http://www.dtcc.com/~media/Files/Downloads/legal/rule-filings/2014/ficc/SR-FICC-2014-09.pdf>

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2014-09 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.⁷

Kevin M. O'Neill
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).