SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80517; File No. SR-FICC-2017-010)

April 24, 2017

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend the Mortgage-Backed Securities Division Rules Concerning Use of Clearing Fund for Losses, Liabilities or Temporary Needs For Funds Incident to the Clearance and Settlement Business and Make Other Related 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 April 11, 2017, 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 the Mortgage-Backed Securities Division ("MBSD") Clearing Rules ("MBSD Rules")[3] of FICC. Specifically, FICC proposes to amend Section 5 of MBSD Rule 4 to (i) delete language that would potentially limit FICC's access to MBSD Clearing Fund cash and collateral to address losses, liabilities, or temporary needs for funds incident to its clearance and settlement business and (ii) make additional changes to correct grammar errors, delete superfluous

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the MBSD Rules, available at www.dtcc.com/legal/rules-and-procedures.aspx.

words and otherwise align the text of Section 5 of MBSD Rule 4 to the text of Section 5 of Rule 4 of FICC's Government Securities Division ("GSD") Rulebook ("GSD Rules").[4]

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 would (i) delete language that would potentially limit FICC's access to MBSD Clearing Fund cash and collateral to address losses, liabilities or temporary needs for funds incident to its clearance and settlement business and (ii) make additional changes to correct grammar errors, delete superfluous words, and otherwise align the text of Section 5 of MBSD Rule 4 to the text of Section 5 of GSD Rule 4.

Section 5 of MBSD Rule 4 (the "Rule" or the "MBSD Rule" as used herein) describes the purposes for which FICC may use MBSD Clearing Fund deposits. The Rule is based on the parallel Section 5 of GSD Rule 4. The Rule describes the use of Clearing Fund deposits both to satisfy "losses or liabilities of the Corporation" and as

[4] See Rule 4 in the GSD Rules, available at www.dtcc.com/legal/rules-and-procedures.aspx. Capitalized terms used herein specifically with respect to GSD and not otherwise defined shall have the meaning assigned to such terms in the GSD Rules.

collateral.[5] The first category is further divided between losses or liabilities "arising from the failure of a Defaulting Member"[6] and those "otherwise incident to the clearance and settlement business of the Corporation *with respect to losses or liabilities to meet unexpected or unusual requirements for funds that represent a small percentage of the Clearing Fund.*"[7] The second category refers to Clearing Fund deposits serving as collateral (i) to meet FICC's temporary financing needs, (ii) to ensure Members' satisfaction of settlement obligations, and (iii) "*to meet unexpected or unusual requirements for funds that represent a small percentage of the Clearing Fund.*"[8]

Section 5 of GSD Rule 4 reflects the same two-part construction but does not contain the limiting language relating to "unexpected or unusual requirements for funds."[9] This limiting language was approved and became effective in 2012 when FICC introduced central counterparty and guaranteed settlement services for MBSD, at which time the entirety of the MBSD Rules were updated and replaced.[10] Neither FICC's

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5 MBSD Rule 4, Section 5.

6 This category of losses or liabilities also includes those relating to failures relating to Cross-Guaranty Agreements, discussion of which is omitted herein for simplicity. Id.

7 Id. (*Emphasis added.*)

8 Id. (*Emphasis added.*)

9 GSD Rule 4, Section 5.

10 See Securities Exchange Act Release No. 66550 (March 9, 2012), 77 FR 15155 (March 14, 2012) (SR-FICC-2008-01) (the "FICC CCP Approval Order") at 15155.

proposal nor the Commission's approval order describes the purpose of the limiting language.[11]

The language appears to have been drawn from the Commission's publication in 1980 of standards for the Commission's Division of Market Regulation (the "Division") to employ in connection with the registration of clearing agencies.[12] In the 1980 Standards Release, the Division stated, in relevant part, that a clearing agency "should have a clearing fund which … is limited in the purposes for which it may be used."[13] The Division further stated that "the rules of the clearing agency should limit the purposes for which the clearing fund may be used to protecting participants and the clearing agency (i) from the defaults of participants and (ii) from clearing agency losses (*not including day-to-day operating expenses*) such as losses of securities not covered by insurance or other resources of the clearing agency."[14] The Division observed that some commenters opposed the limitation contained in clause (ii) on grounds that it could limit a clearing agency's access to its clearing fund in the event of a temporary need to cover an operating funds shortfall while a fee increase was being implemented or a temporary need to cover a delay in payment by a participant due to circumstances beyond the

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11 See Securities Exchange Act Release No. 65899 (Dec. 6, 2011), 76 FR 77287 (Dec. 12, 2011) (SR-FICC-2008-01) (proposed rule change) and FICC CCP Approval Order, id.

12 See Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980) (the "1980 Standards Release").

13 Id. at 41929.

14 Id. (*Emphasis added.*)

participant's control.[15] The Division noted that the commenter expressed concern that the clearing agency not be forced into insolvency in such circumstances.[16] The Division stated that it "appreciate[ed] a clearing agency's possible need for temporary applications of a clearing fund in limited amounts to meet unexpected or unusual requirements for funds," but noted that "regular or substantial use of a clearing fund for such purposes, however, would be inappropriate."[17]

At the time that the Commission published the 1980 Standards Release, clearing agencies operated in a very different manner from how FICC operates today. Clearing agencies were not, for example, subject to requirements with respect to maintaining any particular amount of operating capital.[18] Against this background, it is understandable that the Division could have deemed the temporary access by a clearing agency to a limited amount of its clearing fund to cover operating expense shortfalls to be acceptable.

FICC is now subject to substantially enhanced requirements. On September 28, 2016, the Commission adopted amendments to Rule 17Ad-22 under the Act, including the addition of new section 17Ad-22(e), which specifies enhanced standards for covered

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15 See id.

16 See id.

17 Id.

18 The 1980 Standards Release does not include specific financial requirements for clearing agencies. The Division stated that clearing agencies should provide financial statements to their participants on a periodic basis and that clearing agencies should plan for contingencies including (in relevant part) loss of funds, with respect to which the Division advised that clearing agencies should maintain adequate insurance. See id. at 41926-27 and 41929.

clearing agencies.[19] The new and enhanced standards specified in Rule 17Ad-22(e) require, among other things, that FICC "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" FICC, including "plans for the recovery … of [FICC] necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses."[20] Rule 17 Ad-22(e) also requires FICC to maintain policies and procedures reasonably designed to "[i]dentify, monitor, and manage [its] general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that [it] can continue operations and services as a going concern if those losses materialize."[21] The above requirement includes the requirement that FICC maintain "a viable plan … for raising additional equity should its equity fall below the amount required [to satisfy its operating capital requirement]."[22]

FICC proposes to delete the language in Section 5 of MBSD Rule 4 that limits certain uses by FICC of the MBSD Clearing Fund to "unexpected or unusual" requirements for funds that represent a "small percentage" of the MBSD Clearing Fund

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19 See Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) (the "Covered Clearing Agency Standards Release"). FICC is a "covered clearing agency" as defined in Rule 17Ad-22(a)(5) and must comply with the new section (e) of Rule 17Ad-22 by April 11, 2017.

20 17 CFR 240.17Ad-22(e)(3).

21 17 CFR 240.17Ad-22(e)(15). The capital requirement set forth in Rule 17Ad-22(e)(15) is equal to, at a minimum, six months of FICC's current operating expenses. 17 CFR 240.17Ad-22(e)(15)(ii).

22 17 CFR 240.17Ad-22(e)(15)(iii).

because (i) the first instance of the limiting language could impair FICC's access to the MBSD Clearing Fund as one tool (among many) that FICC could employ in order to manage non-default risks, so that it can withstand or recover from such risks and continue operations and services as a going concern while implementing its viable plan for raising additional capital, and (ii) the effect of the second instance of the limiting language is confusing and unclear.

Although, as noted above, FICC's original objective in including the limiting language when it revised the MBSD Rules is not clear, the comments described in the 1980 Standards Release suggests two examples for which such language could have been intended: (i) limiting FICC's use of the MBSD Clearing Fund should an MBSD member experience an operational problem that caused a temporary delay in payment and (ii) limiting FICC's use of the MBSD Clearing Fund should FICC suffer an operating funds shortfall to the point that FICC's viability as a going concern became temporarily impaired.[23]

The first example, however, is inconsistent with FICC's broad and unlimited access to the MBSD Clearing Fund to satisfy "losses or liabilities … arising from the failure of a Defaulting Member …" and to use Clearing Fund deposits as collateral "to meet its temporary financing needs" with respect to securities settlement.[24] Additionally, FICC believes that both examples would represent a misreading of the objective of this discussion in the 1980 Standards Release, in which the Division stated that a clearing agency's rules should provide that it may access its clearing fund to cover clearing

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[23] See 1980 Standards Release, supra note 12, at 41929.

[24] MBSD Rule 4, Section 5.

agency losses, in addition to losses caused by a participant default, in an unrestricted manner "but not including day-to-day operating expenses."[25] In other words, it appears that the Division believed, at the time when the 1980 Standards Release was published, that a clearing agency *should* be permitted to access its clearing fund on a temporary basis to cover even short-term day-to-day operating losses if such use was necessary to avoid "going out of business" and such use was neither "regular" nor "substantial."[26] FICC notes that it would be extraordinarily unlikely for it to access the MBSD Clearing Fund for such a purpose at the present time, because, as noted above, FICC is now subject to a requirement that it hold, at a minimum, capital equal to six months of operating expenses.[27] To summarize, the limiting language as currently included in the Rule would not be effective to limit FICC's use of the MBSD Clearing Fund to address a temporary operational issue that caused a delay in payment by a participant, nor does FICC believe such limitation would have been intended. While the language would be effective to limit to small amounts FICC's access to MBSD Clearing Fund deposits to cover temporary shortfalls in funds needed to meet day-to-day operating expenses, the utility of such a restriction has been eliminated by the new capital requirements to which FICC is subject.

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25 See 1980 Standards Release, supra note 12, at 41929.

26 Id.

27 On April 6, 2017, FICC submitted a proposed rule change to adopt a Clearing Agency Policy on Capital Requirements and a Clearing Agency Capital Replenishment Plan in connection with its compliance with Rule 17Ad-22(e)(15). See SR-FICC-2017-007 (the "FICC Capital Plan PRC"), which was filed with the Commission but has not yet been published in the Federal Register. A copy of the proposed rule change is available at http://www.dtcc.com/legal/sec-rule-filings.aspx.

FICC is concerned, however, that the limiting language could be interpreted to prevent FICC from accessing MBSD Clearing Fund deposits as a tool to address an unexpected short-term need for funds that would allow FICC to continue operations and services as a going concern while it implements other tools available to it, because such use may be deemed to be either "satisfaction of losses or liabilities of FICC," even if the use of deposits is temporary, or the use of deposits as collateral is to meet "temporary financing needs" (see discussion below), both of which are impacted by the limiting language in the Rule. There are many tools that are available to FICC to address such a need for funds, which tools are described in the FICC Capital Plan PRC. The tools directly available to FICC include increasing fees or decreasing expenses, and FICC's parent company, The Depository Trust & Clearing Corporation ("DTCC"),[28] may also implement tools available to it to raise capital that may be contributed to FICC.[29] While the FICC Capital Plan PRC does not contemplate recourse to either the GSD Clearing Fund or the MBSD Clearing Fund as a formal tool for capital replenishment, FICC believes that it would be imprudent to limit FICC's ability to employ this tool, particularly on a temporary basis, and it is clear that this was not the Division's objective when it discussed the underlying concerns in the 1980 Standards Release. Finally, FICC notes that FICC's access to GSD Clearing Fund deposits is not so limited. While FICC believes that its use of either the MBSD Clearing Fund or the GSD Clearing Fund for

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[28] DTCC operates on a shared services model with respect to FICC and its other subsidiaries. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements.

[29] See FICC Capital Plan PRC, supra note 27, at 8.

such purposes would be extraordinarily unlikely, the distinction between the two rules creates an appearance of inequity between MBSD Members and GSD Netting Members.

FICC also proposes to delete the second instance of the limiting language and otherwise amend the "collateral" portion of Section 5 of MBSD Rule 4, for the reasons described above, to the extent that the second instance of the limiting language that appears in the Rule would limit FICC's ability to pledge MBSD Clearing Fund deposits that are in the form of securities in order to meet temporary financing needs for purposes otherwise permitted by the Rule as FICC proposes to amend it. Section 5 of MBSD Rule 4 states that the MBSD Clearing Fund also may be used to provide FICC

> a source of collateral both [*sic*] to meet its temporary financing needs (through an appropriate financing method determined by the Corporation in its sole discretion) for any financing that is obtained by the Corporation to hold securities pending settlement, to ensure the satisfaction of Members' settlement obligations and to meet unexpected or unusual requirements for funds that represent a small percentage of the Clearing Fund.[30]

This section of the Rule identifies that the MBSD Clearing Fund is a source of collateral for FICC to meet "temporary financing needs" (*i.e.*, where FICC may pledge the assets as collateral to a lender to FICC) and to ensure that Members perform to FICC (*i.e.*, where Members have pledged collateral to FICC as surety against their own default). This understanding of the construction of the Rule is clear from comparison to Section 5 of GSD Rule 4, which also uses the word "both," but where only the temporary financing example and the member surety example follow.[31] It is reasonable to believe that the second instance of the limiting language in the MBSD Rule was simply intended to make

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30 MBSD Rule 4, Section 5.

31 GSD Rule 4, Section 5.

clear that, to the extent FICC was permitted to use the MBSD Clearing Fund to address a particular loss or liability "otherwise incident to the clearance and settlement business," FICC was also permitted to use MBSD Clearing Fund deposits as collateral to address "temporary financing needs" for the same purpose. If so, the same rationale for deleting the limiting language that is described above would apply.

Finally, with respect to both instances of the limiting language in the Rule, FICC is concerned that scenarios that previously may have been fairly described as generating "unexpected or unusual requirements for funds" may no longer be fairly described as "unexpected" or "unusual" given the expectations described in the Covered Clearing Agency Standards Release that covered clearing agencies contemplate and plan for such scenarios.[32]

Consequently, FICC proposes to delete the limiting language in both places where it appears in MBSD Rule 4, Section 5, because the original purpose of the language is unclear, and potential applications of the limiting language may not have been intended or would not be, as a prudential matter, appropriate today. FICC also believes that, because of the uncertain intent of the language and the inherent ambiguity of terms such as "unexpected or unusual," FICC's use of MBSD Clearing Fund deposits to address needs that are "otherwise incident to [its] clearance and settlement business" could be subject to legal challenges. FICC believes that the limiting language could impair FICC's compliance with Rule 17Ad-22(e)(3)(ii), pursuant to which FICC is preparing a recovery plan that provides for FICC's management of a broad range of risks such that it can continue to provide critical clearance and settlement operations and services even if

[32] See Covered Clearing Agency Standards Release, supra note 19, at 70810 and 70836.

such risks materialize.[33] FICC also believes that, because of its unclear purpose and the ambiguity of its terms, the limiting language could also impair FICC's compliance with Rule 17Ad-22(e)(1), pursuant to which FICC is required to "establish, implement, maintain and enforce written policies and procedures reasonably designed to … [p]rovide for a well-founded, clear, transparent and enforceable legal basis for each of its activities in all relevant jurisdictions."[34]

FICC also proposes to amend Section 5 of MBSD Rule 4 to make additional changes that would align the Rule to Section 5 of GSD Rule 4 (where applicable), remove superfluous words and correct grammar errors and sentence construction ambiguities in the paragraph of the Rule that FICC proposes to amend in order to delete the limiting language discussed above. The first instance of the limiting language modifies the phrase "otherwise incident to the clearance and settlement business" with the phrase "with respect to losses and liabilities to meet unexpected or unusual requirements for funds…." FICC proposes that, upon deleting this phrase, "otherwise incident to the clearance and settlement business of the Corporation" would be followed immediately by "including losses and liabilities arising other than from such failure of such Member," which would align the amended MBSD Rule to Section 5 of GSD Rule 4 but would not otherwise change the extent of FICC's authority if the limiting language was deleted. FICC also proposes to replace the word "provide" with the word "providing" because "providing" would be grammatically correct where the sentence

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33 The Commission issued a temporary exemption from compliance with the recovery and wind-down plan requirements of Rule 17Ad-22(e)(3) and (e)(15) until December 31, 2017. Securities Exchange Act Release No. 80378 (April 5, 2017) (File No. S7-03-14).

34 17 CFR 240.17Ad-22(e)(1).

construction is that the use of MBSD Clearing Fund deposits "shall be limited to … satisfaction of losses or liabilities … and to [providing] the Corporation with a source of collateral." Next, FICC proposes to add to the clause referring to temporary financing needs the modifier "including, without limitation," and delete the parenthetical modifier "(through an appropriate financing method determined by the Corporation in its sole discretion) for" that currently precedes the reference to "financing that is obtained by the Corporation to hold securities pending settlement." This change would delete a superfluous parenthetical clause and align the amended MBSD Rule to Section 5 of GSD Rule 4. Finally, FICC proposes to delete a comma and add the word "and" before the phrase "to ensure the satisfaction of Members' settlement obligations," because these changes would be grammatically necessary upon deletion of the second instance of the limiting language. FICC also believes it is reasonable and appropriate to align the language of Section 5 of MBSD Rule 4 to Section 5 of GSD Rule 4, because it would avoid any question whether Section 5 of MBSD Rule 4 should be interpreted differently from Section 5 of GSD Rule 4. FICC does not believe that these sections should be interpreted differently, except as necessary with respect to differences that are specific to the services and defined terminology of each division.

2. Statutory Basis

FICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to FICC. In particular, FICC believes that the proposed rule change is consistent with Section

17A(b)(3)(F)[35] of the Act and Rule 17Ad-22(e) under the Act,[36] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[37] The proposed rule change would enhance FICC's prompt and accurate clearance and settlement of securities transactions because it would enhance FICC's ability to ensure that it can continue its operations and services as a going concern in the unlikely event that it would be necessary or appropriate for FICC to access MBSD Clearing Fund deposits to address losses, liabilities or temporary financing needs incident to its clearance and settlement business. Additionally, the more technical aspects of the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions by removing potentially ambiguous language, correcting grammar errors, and deleting superfluous text in Section 5 of MBSD Rule 4, which changes would enhance the clarity of the Rule. The proposed rule change would also promote the prompt and accurate clearance and settlement of securities transactions by aligning Section 5 of MBSD Rule 4 to Section 5 of GSD Rule 4, which would reduce the risk of legal challenges to FICC's use of MBSD Clearing Fund deposits based upon the argument that differences between the two rules indicate that Section 5 of MBSD Rule 4 should be interpreted differently from Section 5 of GSD Rule 4.

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35 15 U.S.C. 78q-1(b)(3)(F).

36 17 CFR 240.17Ad-22(e).

37 15 U.S.C. 78q-1(b)(3)(F).

FICC also believes that the proposed rule change is consistent Rule 17Ad-22(e)(1) and (3). Rule 17Ad-22(e)(1) requires FICC to "establish, implement, maintain and enforce written policies and procedures reasonably designed to … [p]rovide for a well-founded, clear, transparent and enforceable legal basis for each of its activities in all relevant jurisdictions."[38] As described above, FICC believes that the proposed rule change to eliminate the limiting language described above would reduce the risk of legal challenges to FICC's ability to access MBSD Clearing Fund deposits under scenarios in which FICC believes that such limitation was not intended or in which such limitation would not be appropriate, as a prudential matter, in light of the enhanced standards to which FICC is now subject. The more technical aspects of the proposed rule change would also reduce the risk of legal challenges to FICC's actions that could be based upon grammar errors or differences between Section 5 of MBSD Rule 4 and Section 5 of GSD Rule 4. Rule 17Ad-22(e)(3) 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" FICC, including "plans for the recovery … of [FICC] necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses."[39] The proposed rule change would enhance FICC's compliance with Rule 17Ad-22(e)(3) by enhancing and clarifying FICC's ability to access MBSD Clearing Fund deposits as one tool that it may employ in order to address losses, liabilities or temporary needs for funds

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38 17 CFR 240.17Ad-22(e)(1).

39 17 CFR 240.17Ad-22(e)(3).

incident to its clearance and settlement business. In particular, FICC believes that enhancing and clarifying FICC's ability to access MBSD Clearing Fund deposits in this manner and making the related more technical changes to Section 5 of MBSD Rule 4 would enhance FICC's comprehensive management of legal and operational risks, consistent with Rule 17Ad-22(e)(3)(i).[40] FICC also believes that enhancing and clarifying FICC's ability to access MBSD Clearing Fund deposits to address such risks would enhance FICC's ability to establish and maintain appropriate recovery and orderly wind-down plans, as required by Rule 17Ad-22(e)(3)(ii),[41] by enhancing and clarifying one tool that FICC may employ in order to address such risks.

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

FICC believes that the proposed rule change to delete the limiting language in Section 5 of MBSD Rule 4 could have an impact upon competition. Specifically, as a result of the proposed rule change FICC's ability to access MBSD Clearing Fund deposits with respect to certain non-default losses would be expanded and clarified. Although FICC believes it is extraordinarily unlikely that FICC would find it necessary or appropriate to employ this tool in lieu of other tools that are available to FICC, if FICC were to access MBSD Clearing Fund deposits for this purpose, and such use became a loss or liability that was allocated to MBSD Members pursuant to Section 5 and Section 7 of MBSD Rule 4, such allocation could have a different financial impact upon MBSD Members than would be imposed by use of another tool that FICC could employ to

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40 17 CFR 240.17Ad-22(e)(3)(i). See also Covered Clearing Agency Standards Release, supra note 19, at 70810 (discussing guidelines that a covered clearing agency should consider with respect to its comprehensive risk management framework).

41 17 CFR 240.17Ad-22(e)(3)(ii).

address the underlying loss, liability, or temporary needs for funds incident to its clearance and settlement business. Accordingly, FICC believes that the proposed rule change to delete the limiting language in Section 5 of MBSD Rule 4 could burden competition. However, FICC does not believe that this aspect of the proposed rule changes would impose a significant burden on competition, both because it is extraordinarily unlikely that FICC would employ this tool and because FICC's access to MBSD Clearing Fund deposits for these purposes would, if employed, likely replace (possibly temporarily) alternative tools such as fee increases or capital-raising tools available to DTCC that would also have a financial impact on MBSD Members.

FICC believes that the above described potential burden on competition would be necessary and appropriate in furtherance of the Act, specifically Section 17A(b)(3)(F) of the Act,[42] because, as described above, the proposed rule change would enhance FICC's prompt and accurate clearance and settlement of securities transactions by enhancing FICC's ability to ensure that it can continue its operations and services as a going concern, in the unlikely event that it would be necessary or appropriate for FICC to access MBSD Clearing Fund deposits to address losses, liabilities or temporary financing needs incident to its clearance and settlement business. FICC also believes that the proposed rule change to delete the limiting language in Section 5 of MBSD Rule 4 is necessary and appropriate in furtherance of the Act because it would (i) reduce the risk of legal challenges to FICC's ability to access MBSD Clearing Fund deposits under scenarios in which FICC believes that such limitation was not intended or in which, FICC believes, such limitation would not be appropriate, thereby supporting FICC's

[42] 15 U.S.C. 78q-1(b)(3)(F).

compliance with Rule 17Ad-22(e)(1),[43] (ii) enhance FICC's comprehensive management of legal and operational risks, thereby supporting FICC's compliance with Rule 17Ad-22(e)(3)(i),[44] and (iii) enhance FICC's ability to establish and maintain appropriate recovery and orderly wind-down plans, thereby supporting FICC's compliance with Rule 17Ad-22(e)(3)(ii).[45]

FICC does not believe the additional changes to correct grammar errors, delete superfluous words and otherwise align the text of Section 5 of MBSD Rule 4 to the text of Section 5 of GSD Rule 4 would have any impact upon competition, because these proposed rule changes would enhance the clarity and grammatical accuracy of the Rule and therefore would not have an impact on MBSD members or impose any other potential 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. 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:

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43 17 CFR 240.17Ad-22(e)(1).

44 17 CFR 240.17Ad-22(e)(3)(i).

45 17 CFR 240.17Ad-22(e)(3)(ii).

(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:

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-2017-010 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-2017-010. 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; 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-2017-010 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.[46]

Eduardo A. Aleman
Assistant Secretary

[46] 17 CFR 200.30-3(a)(12).