

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82672; File No. SR-FICC-2018-002)

February 8, 2018

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend the By-Laws and Make Other 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 February 2, 2018, 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 would amend the FICC By-Laws (“By-Laws”) to (i) revise titles or offices and the powers and duties of the Board of Directors (“Board”) and certain designated officers of FICC, (ii) revise the section describing compensation of officers, and (iii) make certain technical changes and corrections.³ The GSD Rules and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The By-Laws and the Restated Certificate of Incorporation would each be incorporated by reference into the FICC Government Securities Division Rulebook (“GSD Rules”) and the FICC Mortgage-Backed Securities Division Rulebook (“MBSD Rules”).

the MBSD Rules would also be amended to incorporate by reference the By-Laws and the Restated Certificate of Incorporation.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

In FICC's review of the By-Laws, FICC has identified and is proposing the following changes to the By-Laws: (i) revising certain Board and designated officer titles or offices and updating the related powers and duties, (ii) revising the section describing the compensation of officers and (iii) making certain technical changes and corrections. Specifically, regarding the proposed changes to the Board and designated officer titles or offices and updating the related powers and duties, FICC is proposing to: (1) change the title of Chairman of the Board to Non-Executive Chairman of the Board and update the related powers and duties

⁴ The GSD Rules and the MBSD Rules are available at <http://www.dtcc.com/legal/rules-and-procedures>. The By-Laws and the Restated Certificate of Incorporation would be available at <http://www.dtcc.com/legal/rules-and-procedures>.

associated with that role due to personnel changes in FICC's management, (2) add the office of the Chief Executive Officer ("CEO"), combine the office of the President and the office of the Chief Executive Officer into one office (President and Chief Executive Officer) and update the related powers and duties to reflect that the two positions are now combined and are held by one individual, (3) add the office of the Chief Financial Officer ("CFO") and delete the office of the Comptroller, (4) delete the office of the Chief Operating Officer ("COO"), (5) change the title of Vice President to Executive Director and update the related powers and duties, and (6) make other changes related to certain powers and duties of the Board and various officers, including Managing Directors, the Vice Chairman of the Corporation, the Treasurer and the Assistant Treasurer, as described in greater detail below. FICC is proposing to make these changes to the By-Laws so that the By-Laws remain consistent and accurate and FICC's governance documents accurately reflect its management and organizational structure and the responsibilities within the purview of certain roles. FICC believes these changes would facilitate the efficient governance and operation of FICC.

The GSD Rules and MBSD Rules would also be amended to incorporate by reference the Restated Certificate of Incorporation and the By-Laws, as further described below. The current Certificate of Incorporation would be restated to streamline this document, which FICC believes would enhance clarity and transparency. The following describes the proposed changes to the By-Laws, the Certificate of Incorporation, the GSD Rules, and the MBSD Rules.

Proposed Changes to the By-Laws⁵

A. *Changes to Certain FICC Board and Designated Officer Titles or Offices and Updates to the Related Powers and Duties*

FICC proposes to revise the titles or offices and update the related powers and duties of various designated officers and the Board, as further described below.

1. **Change the Title of Chairman of the Board to Non-Executive Chairman of the Board; Update the Powers and Duties of the Non-Executive Chairman of the Board**

FICC proposes to replace the title of Chairman of the Board with the title Non-Executive Chairman of the Board (“Non-Executive Chairman of the Board”). This change in title reflects that this position is now held by an individual who is not part of FICC’s management (i.e., a non-executive). In 2016, FICC made personnel changes. As part of these personnel changes, the individual who was serving as Chairman of the Board and who was part of FICC’s management at that time became a non-executive. FICC believed that it would be beneficial and desirable to continue to have this individual serve as chairman of the Board even though he is no longer part of FICC’s management. Therefore, FICC proposes to change the title of this position in the By-Laws to Non-Executive Chairman of the Board to reflect that this position is held by a non-executive. FICC believes this proposed change would accurately reflect this organizational change. Furthermore, FICC proposes to revise the By-Laws to enumerate the powers and duties of the Non-Executive Chairman of the Board.

⁵ FICC last submitted a rule filing regarding changes to the By-Laws in 2006. See Securities Exchange Act Release No. 54173 (July 19, 2006), 71 FR 42890 (July 28, 2006) (SR-DTC-2006-10, SR-FICC-2006-09, and SR-NSCC-2006-08).

To implement this proposed change, FICC would revise the By-Laws as described below.

Certain references to either Chairman or Chairman of the Board would be revised to Non-Executive Chairman of the Board in the sections of the By-Laws that would continue to apply to the Non-Executive Chairman of the Board.

Specifically, the following changes would be made:

- a. In current Section 1.2 (Special Meetings), the references to Chairman would be revised to Non-Executive Chairman of the Board by adding the word “Non-Executive” before the second reference to Chairman in the first sentence and the phrase “of the Board” after such reference. In addition, the phrase “by the Chairman” in the first sentence of current Section 1.2 (Special Meetings) would be deleted because it would be repetitive to the language that is currently included later in this section.
- b. In current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), and current Section 5.1 (Certificates for Shares), the word “Non-Executive” would be added before each reference to the Chairman of the Board.

Certain references to Chairman of the Board in the By-Laws would be deleted because such references are in the sections of the By-Laws that only apply to members of FICC management. Because the Non-Executive Chairman of the Board would not be a management position, such sections of the By-Laws would no longer be applicable. Specifically, the following changes would be made:

- a. In current Section 3.1 (General Provisions), Chairman of the Board would be removed from the list of designated officers of FICC.
- b. In current Section 3.12 (Compensation of Officers), the references to the Chairman of the Board would also be deleted because the Non-Executive Chairman of the Board does not receive compensation and because, as further described below, this section would be revised to only address the setting of compensation for the President.

Current Section 3.2 (Powers and Duties of the Chairman of the Board) would be deleted and replaced by proposed Section 2.8 (Non-Executive Chairman of the Board). Specifically, the following changes would be made:

- a. Certain powers and duties prescribed to the Chairman of the Board in current Section 3.2 (Powers and Duties of the Chairman of the Board) would remain with the Non-Executive Chairman of the Board. Such powers and duties include (i) presiding over the meetings of the stockholders and of the Board at which he is present and (ii) such other powers and duties as the Board may designate. This would be set forth in proposed Section 2.8 (Non-Executive Chairman of the Board). Furthermore, as is similarly stated in current Section 3.2 (Powers and Duties of the Chairman of the Board), proposed Section 2.8 (Non-Executive Chairman of the Board) would also state that the “performance of any such duty

by the Non-Executive Chairman of the Board shall be conclusive evidence of his power to act.”

- b. FICC would also expressly include in proposed Section 2.8 (Non-Executive Chairman of the Board) that the Non-Executive Chairman of the Board has general supervision over the Board and its activities and would provide overall leadership to the Board. Consistent with his authority to supervise and lead the Board, FICC proposes to assign the responsibility for carrying out the policies of the Board of Directors to the Non-Executive Chairman of the Board rather than the President (as is provided in current Section 3.3 (Powers and Duties of the President)). Furthermore, in current Section 3.6 (Powers and Duties of the Secretary), the power to assign additional powers and duties to the Secretary would be revised to replace the reference to President with Non-Executive Chairman of the Board. FICC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have as part of his general supervision of the Board.
- c. In addition, proposed Section 2.8 (Non-Executive Chairman of the Board) would state that, in the absence of the Non-Executive Chairman of the Board, the presiding director, as elected by the Board, shall preside at all meetings of the stockholders and of the Board at which he or she is present. Current Section 3.3 (Powers and Duties of the President) provides that, in the absence or in

ability of the Chairman of the Board, the President shall preside at all meetings of shareholders and all meetings of the Board of Directors at which he is present. Pursuant to the Board of Directors of The Depository Trust & Clearing Corporation (“DTCC”), The Depository Trust Company (“DTC”), FICC and National Securities Clearing Corporation (“NSCC”) Mission Statement and Charter (“Board Mission Statement and Charter”), FICC annually elects a presiding director to preside at meetings when the Non-Executive Chairman of the Board is absent. As such, FICC believes the proposed language described above would enhance accuracy by correcting the inconsistency between the By-Laws and the Board Mission Statement and Charter.

- d. As further described below, in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer), the Non-Executive Chairman of the Board would have the authority to designate powers and duties to the President and CEO. FICC believes this authority to designate powers and duties to the President and CEO is within the scope of the supervisory role of the Non-Executive Chairman of the Board and therefore proposes to revise the By-Laws to expressly state that the Non-Executive Chairman has this authority.
- e. In current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), FICC would add the Non-Executive

Chairman of the Board to the list of individuals who have the power to assign powers and duties to Managing Directors as well as make conforming changes. FICC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have because he has general supervision over the Board.

2. Add the Office of the CEO and Combine the Office of the President and the Office of the CEO into the Office of the President and CEO; Update the Related Powers and Duties

FICC proposes to add the office of the CEO and combine the office of the President and the office of the CEO into one office (President and CEO) because one individual is the President and CEO. FICC proposes to revise the By-Laws to reflect that one individual holds the office of the President and CEO, including revising the list of designated officers in current Section 3.1 (General Provisions) to include the President and CEO. While current Section 3.3 (Powers and Duties of the President) provides that the President shall be the chief executive officer, current Section 3.1 (General Provisions) does not include CEO in the list of designated officer positions (President is currently included in this list). As such, FICC would revise certain references in the By-Laws from President to President and Chief Executive Officer. Specifically, FICC proposes to make the changes to the By-Laws that are described below.

- a. In current Section 1.2 (Special Meetings), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), current Section 3.1 (General Provisions), current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), current Section 3.7 (Powers and Duties of the Treasurer), and

current Section 3.12 (Compensation of Officers), the words “and Chief Executive Officer” would be added after each reference to President.

- b. In current Section 5.1 (Certificates for Shares), the words “the President” would be deleted and replaced by the words “President and Chief Executive Officer.”
- c. Additionally, in current Section 1.2 (Special Meetings), the phrase “, or by the President,” in the first sentence would be deleted because FICC believes it is repetitive to language that appears later in the section.

Furthermore, except as otherwise described below, the responsibilities, duties and powers granted to the President that are currently described in the By-Laws would continue to remain with the President and CEO. FICC proposes to make the following changes to the By-Laws to reflect the updated responsibilities and powers and duties that are granted to the President and CEO:

- a. A portion of current Section 3.3 (Powers and Duties of the President) would be deleted and replaced with proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer). The remaining portion of current Section 3.3 (Powers and Duties of the President) would be included in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer).

- b. Current Section 3.3 (Powers and Duties of the President) states that the President will have general supervision over the business and affairs of FICC subject to the direction of the Board. Additionally, current Section 3.3 (Powers and Duties of the President) states that the President may employ and discharge employees and agents of FICC, except such as shall be elected or appointed by the Board, and he may delegate these powers. Similarly, proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer) would state that the President and Chief Executive Officer would have general supervision over the overall business strategy, business operations, systems, customer outreach, and risk management, control and staff functions, subject to the direction of the Board and the Non-Executive Chairman of the Board. FICC believes the additional detail provided in proposed Section 3.2 (Powers and Duties of the President and CEO) would add clarity to the powers and duties associated with the role of President and Chief Executive Officer and would be consistent with the combined role. In addition, because the office of the COO would be eliminated (as described further below), the responsibility of general supervision over the operations of FICC, which is designated to the COO role in current Section 3.4 (Powers and Duties of the Chief Operating Officer), would be assigned to the President and CEO.

- c. Proposed Section 3.2 (Powers and Duties of the President and CEO) would state that the President and CEO would have such other powers and perform such other duties as the Board or the Non-Executive Chairman of the Board may designate. FICC believes this generally aligns with current Section 3.3 (Powers and Duties of the President). FICC believes that providing the Non-Executive Chairman of the Board with this additional authority to designate powers and duties to the President and CEO is within the scope of the supervisory role of the Non-Executive Chairman of the Board.
- d. As noted above, certain powers and duties listed in current Section 3.3 (Powers and Duties of the President) would be removed or assigned to another position. Specifically, as noted above, the responsibility for carrying out the policies of the Board would be assigned to the Non-Executive Chairman of the Board rather than to the President and CEO. Additionally, the statement that “performance of any such duty by the President shall be conclusive evidence of his power to act” that appears in current Section 3.3 (Powers and Duties of the President) would be removed as FICC believes it would be best practice to document specific designation of powers and/or duties made by the Board or Non-Executive Chairman of the Board to the President and CEO.

- e. As described above, in current Section 3.6 (Powers and Duties of the Secretary), the power to assign additional powers and duties to the Secretary would be removed from the President and granted to the Non-Executive Chairman of the Board. FICC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have as part of his general supervision of the Board.
 - f. As described below, the President and Board currently have the authority to assign powers and duties to the Comptroller in current Section 3.8 (Powers and Duties of the Comptroller). Similarly, proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) would provide that the CFO would perform such other duties as he may agree with the President and CEO and the Board.
3. Add the Office of the CFO; Delete of the Office of the Comptroller

FICC would add the office of the CFO and assign to the CFO all of the powers and duties of the office of the chief financial officer. The CFO would, in general, have overall supervision of the financial operations of FICC.

Furthermore, references to the office of the Comptroller would be deleted. FICC does not currently have a Comptroller nor does FICC plan to appoint one.

Therefore, FICC believes it would be more accurate to remove all references to such position in the By-Laws. Specifically, FICC would revise the By-Laws as described below.

- a. In current Section 3.1 (General Provisions), CFO would be added to and Comptroller would be removed from the list of designated officers of FICC.
- b. FICC would add proposed Section 3.5 (Powers and Duties of the Chief Financial Officer). This proposed section would enumerate the powers and duties of the CFO. It would state that the CFO would have overall supervision of the financial operations of FICC and upon request, would counsel and advise other officers of FICC and perform other duties as agreed with the President and CEO or as determined by the Board. FICC believes these powers and duties are appropriate for the newly created role of CFO. Proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) would also state that the CFO would report directly to the President and CEO. FICC believes it is appropriate for the CFO to report to the President and CEO and to specify this clear line of responsibility in the By-Laws.
- c. Furthermore, proposed Section 3.6 (Powers and Duties of the Treasurer) would also be revised to state that the Treasurer shall have all such powers and duties as generally are incident to the position of Treasurer or as the CFO (in addition to the President and CEO and the Board) may assign to him. Because the Treasurer directly reports to the CFO, FICC believes it is

appropriate for the CFO to assign powers and duties to the Treasurer.

- d. FICC would delete current Section 3.8 (Powers and Duties of the Comptroller), which, with the elimination of the office of the Comptroller, would no longer be necessary.

4. Delete the Office of the COO

FICC would also delete references to the designated office of the COO in the By-Laws. FICC believes this change is necessary because FICC no longer has a COO nor does FICC plan to appoint one. Specifically, FICC would make the changes to the By-Laws described below.

- a. In current Section 3.1 (General Provisions), the COO would be removed from the list of designated officers of FICC.
- b. Current Section 3.4 (Powers and Duties of the Chief Operating Officer) would be deleted, which, with the elimination of the office of the COO, would no longer be necessary. The power and duty prescribed to this position (general supervision over the operations of FICC) would be assigned to the President and CEO in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer), as described above.

5. Change the Title of Vice President to Executive Director; Update the Related Powers and Duties

FICC proposes to change the title of Vice President to Executive Director and update the related powers and duties. FICC believes these changes are necessary because FICC has decided that the title of Executive Director is more

widely used in the financial services industry for roles similar to those designated as Vice Presidents. In FICC's organizational structure, Executive Directors report to Managing Directors. As such, it was decided that Executive Directors do not have sufficient seniority to call special meetings of shareholders, to preside over shareholder meetings unless specifically designated to do so by the Board, or to sign share certificates. FICC proposes to make the following changes to the By-Laws to reflect the change in the title from Vice President to Executive Director and to update the related powers and duties.

- a. In current Section 1.2 (Special Meetings), the proposed rule change would remove Vice Presidents from the list of officers authorized to call special meetings of shareholders. FICC believes that Vice Presidents do not have sufficient seniority to call special meetings of shareholders.
- b. In current Section 1.8 (Presiding Officer and Secretary), Vice President would be removed. FICC believes that a Vice President should not preside over a shareholder meeting unless specifically designated to do so by the Board.
- c. In current Section 3.1 (General Provisions), Vice Presidents would be removed from the list of designated officers of FICC. As described below, a parenthetical phrase would be added explaining that the Board's power to appoint other officers includes the power to appoint one or more Executive Directors.

- d. In current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), all references to Vice President would be deleted. Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors) currently states that Vice Presidents and Managing Directors have such powers and perform such duties as the Board or the President may assign to them.⁶ Because individuals with the title of Executive Director report to Managing Directors, FICC believes the reference to Vice President in this section would not be necessary.
- e. In current Section 5.1 (Certificates for Shares), the reference to Vice President would be removed because Vice Presidents are no longer authorized to sign share certificates. As described above, FICC decided that they do not have sufficient seniority to do so.

6. Other Changes to the Powers and Duties of the Board and Certain Other Designated Officers

Managing Directors

- a. In Section 1.8 (Presiding Officer and Secretary), the reference to the Managing Director would be removed because FICC believes a Managing Director should not preside over a shareholder meeting unless specifically designated to do so by the Board.

⁶ With this proposal, this reference to President would be revised to President and CEO, and the Non-Executive Chairman of the Board would be added so the Non-Executive Chairman of the Board would also be able to assign powers and duties to the Managing Directors.

- b. In current Section 2.6 (Meetings), the proposal would add Managing Directors to the list of officers authorized to call special meetings of the Board. FICC believes this proposed change would provide FICC's management with additional flexibility by enabling additional persons within senior management to call special meetings of the Board.

Vice Chairman of the Corporation

As described below, a parenthetical phrase would be added in current Section 3.1 (General Provisions) explaining that the Board's power to appoint other offices includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation.

Board

- a. In current Section 3.1 (General Provisions), FICC proposes to add a parenthetical phrase explaining that the Board's power to appoint other offices includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation and one or more Executive Directors to enhance clarity.
- b. Additionally, in current Section 3.1 (General Provisions), regarding the ability of any one person to hold more than one office, FICC proposes to enhance and clarify the exception by specifying that neither the Secretary nor any Assistant Secretary can hold the following offices: (1) Vice Chairman of the Corporation, (2) President, or (3) President and CEO. FICC

believes this proposed change is necessary to ensure that the Secretary and any Assistant Secretary would not hold those positions.

Treasurer

In current Section 5.1 (Certificates for Shares), FICC proposes to delete the reference to Treasurer from the list of authorized signatories because FICC expects the Secretary or an Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.

Assistant Treasurer

In current Section 5.1 (Certificates for Shares), FICC proposes to delete the reference to Assistant Treasurer from the list of authorized signatories because FICC expects the Secretary or an Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.

7. Revise Compensation of Officers to Compensation of the President and Chief Executive Officer

Current Section 3.12 (Compensation of Officers) would be revised to accurately reflect FICC's compensation setting practices. Current Section 3.12 states that: (i) the compensation, if any, of the Chairman of the Board, and the President shall be fixed by a majority (which shall not include the Chairman of the Board or the President) of the entire Board of Directors and (ii) salaries of all other officers shall be fixed by the President with the approval of the Board and no officer shall be precluded from receiving a salary because he is also a director.

Current Section 3.12 would be revised to state that the Compensation Committee of the Corporation will recommend the compensation for the President and Chief Executive Officer to the Board of Directors for approval because, pursuant to the DTCC/DTC/FICC/NSCC Compensation and Human Resources Committee Charter (“Compensation Committee Charter”), this is the process that is followed. In addition, FICC also proposes to delete the language stating that salaries of all other officers shall be fixed by the President with approval of the Board and no officer shall be precluded from receiving a salary because he is also a director. FICC believes the proposed changes are appropriate because they no longer reflect FICC’s compensation setting procedures. In addition, as noted above, references to Chairman of the Board would be deleted because the Non-Executive Chairman of the Board does not receive compensation. Furthermore, the title of this section would be revised from Compensation of Officers to Compensation of the President and Chief Executive Officer because this section would no longer speak to the compensation of officers other than the President and CEO.

B. Technical Changes and Corrections

FICC has identified the following technical changes and/or corrections that it proposes to make to the By-Laws to enhance the clarity and readability of the By-Laws.

1. Delete Direct Reference to Statutes and Statutory Requirements

FICC would delete direct statutory references from the By-Laws as set forth below so that the By-Laws remain consistent and accurate despite any changes to a specifically cited statute. FICC believes this proposed change would also provide FICC with a broad base to act in accordance with relevant law

without violating the By-Laws and thereby also provide FICC with more flexibility. Specifically, FICC proposes to make the following changes to the By-Laws:

- a. In current Section 1.2 (Special Meetings), regarding special meetings for the election of directors, the reference to the provisions of Section 603 of the New York Business Corporation Law would be deleted and the phrase “or as required by law” would be added.
- b. In current Section 1.4 (Notice of Meetings), regarding the composition of notices for shareholder meetings, the reference to the specific provisions and requirements of Section 623 of the New York Business Corporation Law would be deleted.

2. Other Technical Changes and Corrections

In addition to the technical changes proposed above, FICC proposes to make the additional technical and grammatical changes described below.

- a. In the heading for the By-Laws, “AMENDED AND RESTATED” would be deleted and “BY-LAWS OF FIXED INCOME CLEARING CORPORATION” would be revised to boldfaced text.
- b. In the headings for Articles I through VIII, (i) each of “ARTICLE I,” “ARTICLE II,” “ARTICLE III,” “ARTICLE IV,” “ARTICLE V,” “ARTICLE VI,” “ARTICLE VII,” and “ARTICLE VIII”

would be revised to boldfaced text and (ii) each of the article titles would be revised to boldfaced text to enhance readability.

- c. In current Sections 1.1 through 2.11 and current Sections 4.1 through 5.4, the section number and section titles would be revised to italicized text to be consistent with current Sections 3.1 through 3.12.
- d. In current Section 1.2 (Special Meetings), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), current Section 3.1 (General Provisions), current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), current Section 3.6 (Powers and Duties of the Treasurer), current Section 3.12 (Compensation of Officers), and current Section 5.1 (Certificates for Shares), conforming grammatical corrections would be made.
- e. Current Section 2.8 (Executive Committee) through current Section 2.11 (Compensation of and Loans to Directors) would be renumbered to reflect the addition of proposed Section 2.8 (Non-Executive Chairman of the Board).
- f. In current Section 2.11 (Compensation of and Loans to Directors), “form” would be deleted and replaced with “from” to correct a typographical error.
- g. Current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors) through current Section 3.12 (Compensation

of Officers) would be renumbered to reflect the addition of proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer) and proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) and the deletion of current Section 3.2 (Powers and Duties of the Chairman of the Board), current Section 3.3 (Powers and Duties of the President), current Section 3.4 (Powers and Duties of the Chief Operating Officer) and current Section 3.8 (Powers and Duties of the Comptroller).

- h. In current Section 4.1 (Directors and Officers), “corporation” would be deleted and replaced with “Corporation” to correct a typographical error.
- i. Proposed Article IX (Gender References) would be added to clarify that the By-Laws are intended to be gender neutral with any reference to one gender deemed to include the other.

Proposed Changes to the Certificate of Incorporation

The current Certificate of Incorporation is comprised of several documents, including amendments that have been made throughout the history of FICC. In order to streamline this Certificate of Incorporation into one updated document that includes all provisions, FICC would restate the current Certificate of Incorporation as proposed in Exhibit 5C.

Proposed Changes to the GSD Rules and MBSD Rules

FICC proposes to add a section entitled “By-Laws and Restated Certificate of Incorporation” to each of the GSD Rules and MBSD Rules. This section would indicate

that the Restated Certificate of Incorporation and the By-Laws are incorporated by reference.

2. Statutory Basis

Section 17A(b)(3)(A) of the Act requires, among other things, that a clearing agency is so organized to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.⁷ FICC believes the (a) proposed changes to the By-Laws described above, (b) restatement of the Certificate of Incorporation, and (c) incorporation by reference of the By-Laws and the Restated Certificate of Incorporation in the GSD Rules and MBSD Rules are consistent with this provision. Specifically, FICC believes that the (1) change of title from Chairman of the Board to Non-Executive Chairman of the Board and changes to the related powers and duties, (2) addition of the office of the CEO, the combination of the offices of the President and CEO and changes to the related powers and duties, (3) addition of the office of the CFO and deletion of the office of the Comptroller, (4) change of title from Vice President to Executive Director and changes to the related powers and duties, (5) deletion of the office of the COO, (6) changes to the powers and duties of the Board, (7) changes to the powers and duties of Managing Directors, (8) changes to the powers and duties of Vice Chairman of the Corporation, (9) changes to the powers and duties of the Treasurer, and (10) changes to the powers and duties of the Assistant Treasurer are designed to facilitate the effective and efficient governance and operation of FICC and accurately reflect FICC's current Board and management structure. FICC also believes the changes to the powers and duties of the Board and designated officer positions are

⁷ 15 U.S.C. 78q-1(b)(3)(A).

appropriate and aligned with each role. Furthermore, these proposed changes are intended to promote additional clarity as to the responsibilities of the Board and certain designated officers. FICC believes the proposed changes to the section describing the compensation of officers are designed to accurately reflect: (1) the process that is followed for setting compensation pursuant to the Compensation Committee Charter and (2) that the Non-Executive Chairman of the Board does not receive compensation and would promote additional clarity as to the setting of compensation of the President and CEO and Non-Executive Chairman of the Board. FICC also believes (1) the technical changes and corrections to the By-Laws and (2) the restatement of the Certificate of Incorporation into a simpler document would enhance clarity and transparency in FICC's organizational documents. Similarly, FICC believes incorporating the By-Laws and the Restated Certificate of Incorporation into the GSD Rules and the MBSD Rules would enhance clarity and transparency regarding FICC's organizational documents because these organizational documents would be expressly identified in the same document as the MBSD Rules and GSD Rules to which members are subject. Therefore, FICC believes these proposed changes are consistent with the requirement that FICC is so organized to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.

Rule 17Ad-22(e)(1) under the Act requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent and enforceable legal basis for each aspect of its

activities in all relevant jurisdictions.⁸ FICC believes the (1) proposed changes to the titles or offices and the related powers and duties of the Board and certain officers and (2) proposed technical changes and corrections to the By-Laws are designed to ensure that FICC's organizational documents accurately describe FICC's organizational structure and that such organizational documents remain clear, transparent, and consistent. In addition, FICC believes the proposed changes to restate the Certificate of Incorporation to simplify this governing document would enhance the clarity, transparency, and readability of this governing document. Therefore, FICC believes these proposed changes are consistent with Rule 17Ad-22(e)(1) because they are designed to ensure that FICC's organizational documents remain well-founded, transparent and enforceable in all relevant jurisdictions.⁹

Rule 17Ad-22(e)(2) requires that FICC establish, implement, maintain and enforce written policies and procedures to provide for governance arrangements that, among other things, (1) are clear and transparent, (2) support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of owners and participants, and (3) specify clear and direct lines of responsibility.¹⁰ FICC believes the (a) proposed changes to the By-Laws described above, (b) restatement of the Certificate of Incorporation, and (c) incorporation by reference of the By-Laws and the Restated Certificate of Incorporation in the GSD Rules

⁸ 17 CFR 240.17Ad-22(e)(1).

⁹ Id.

¹⁰ 17 CFR 240.17Ad-22(e)(2).

and MBSD Rules are designed to be consistent with Rule 17Ad-22(e)(2).¹¹ Specifically, FICC believes that the proposed changes to the By-Laws regarding the titles or offices and the related powers and duties of various officers and the Board would enhance clarity and transparency because they would clearly and accurately set forth the organizational structure of FICC, including the roles and lines of responsibility of various officers and the Board. FICC also believes the proposed changes relating to the section describing the compensation of officers would enhance clarity and transparency regarding its compensation setting procedures by (1) accurately reflecting the process that is followed pursuant to the Compensation Committee Charter and (2) clarifying that the Non-Executive Chairman of the Board does not receive compensation. The proposed technical changes and corrections to the By-Laws are also designed to enhance the clarity, transparency, and readability of the By-Laws. In addition, the proposal to restate the current Certificate of Incorporation is designed to enhance the clarity, transparency, and readability of the current Certificate of Incorporation by simplifying it into one document. FICC also believes that incorporating the By-Laws and the Restated Certificate of Incorporation into the GSD Rules and MBSD Rules would enhance clarity and transparency as to FICC's organizational documents because these organizational documents would be expressly identified in the same document as the MBSD Rules and GSD Rules to which members are subject. FICC believes that, taken together, these proposed changes would facilitate the effective and efficient governance and operation of FICC and therefore would enable FICC to better serve its members. As such, FICC believes these proposed changes would also support the public interest requirements in

¹¹ Id.

Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of its owners and participants. Therefore, FICC believes these proposed rule changes are consistent with Rule 17Ad-22(e)(2) because they are designed to enhance clarity and transparency in FICC's governance arrangements, support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of owners and participants, and specify clear and direct lines of responsibility for various officer positions and the Board within FICC's organizational structure.¹²

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

FICC does not believe that the proposed rule change would have any impact on competition. The proposed rule change would amend the By-Laws to: (1) accurately reflect FICC's organizational structure and reflect changes to titles or offices and the related powers and duties of the Board and various designated officers, (2) accurately reflect (a) the process that is followed for setting compensation pursuant to the Compensation Committee Charter and (b) that the Non-Executive Chairman of the Board does not receive compensation, and (3) enhance the clarity and readability of the By-Laws by making technical changes and corrections. The proposed change to restate the current Certificate of Incorporation would enhance clarity and transparency by simplifying the provisions into one document. The proposal to incorporate by reference the By-Laws and the Restated Certificate of Incorporation into the GSD Rules and the MBSD Rules would further enhance clarity and transparency because these organizational documents would be expressly identified in the GSD Rules and the MBSD

¹² Id.

Rules to which members are subject. FICC does not believe that this proposal would affect any of its current practices regarding the rights or obligations of its members.

Therefore, FICC believes that the proposal would not have any effect on its members and thus, would not have any impact or 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 any written comments relating to this proposal. FICC will notify the Commission of any written comments received by it.

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.

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-2018-002 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-2018-002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2018-002 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.¹³

Eduardo A. Aleman
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).