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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83401; File No. SR-FICC-2018-003]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change to Amend the Fee Structure of the Government Securities Division Rulebook

June 8, 2018.

On April 27, 2018, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2018-003, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder.[2] The proposed rule change was published for comment in the Federal Register on May 8, 2018.[3] The Commission received one comment letter on the proposed rule change.[4] For the reasons discussed below, the Commission approves the proposed rule change.

I. Description of the Proposed Rule Change

The proposed rule change would amend the FICC Government Securities Division ("GSD") Rulebook ("GSD Rules")[5] to modify the GSD Fee Structure. FICC

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

2 17 CFR 240.19b-4.

3 Securities Exchange Act Release No. 83153 (May 2, 2018), 83 FR 20882 (May 8, 2018) (SR-FICC-2018-003) ("Notice").

4 Letter from Ted Bragg, Vice President – Head of U.S. Fixed Income, Nasdaq ("Nasdaq"), dated May 14, 2018, to Eduardo A. Aleman, Assistant Secretary, Commission ("Nasdaq Letter") available at https://www.sec.gov/comments/sr-ficc-2018-003/ficc2018003.htm.

5 Available at http://www.dtcc.com/legal/rules-and-procedures.

states that it designed the proposed rule change to reduce complexity and to better align pricing with the costs of services provided by GSD.[6] More specifically, FICC states that the transaction processing fees and the position management fees associated with the delivery-versus-payment ("DVP") service account for approximately 30 percent and 70 percent, respectively, of GSD's projected costs from the DVP service.[7] Accordingly, FICC states that the proposed fee changes are designed to align GSD's revenue with that 30/70 percent split between transaction processing and position management costs, respectively.[8] In doing so, FICC would shift the GSD Fee Structure regarding the DVP service away from the existing volume-driven approach to a position-based approach.[9] Ultimately, FICC expects GSD's net revenue to remain relatively unchanged as a result of this proposal.[10]

A. Proposed Changes to the GSD Fee Structure

The proposed GSD Fee Structure would, in effect, establish 4 new fees, modify 1 existing fee, and eliminate 12 fees.[11] These proposed changes are summarized below.

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6 Notice, 83 FR at 20882.

7 Id. at 20884.

8 Id.

9 Id.

10 Id.

11 Id.

New Fees

In proposed Section I of the GSD Fee Structure, FICC would replace the seven-tiered trade submission fees for both dealer accounts and broker accounts with a single transaction processing fee that would be charged to GSD members ("Members") upon the comparison of a side of a buy/sell transaction or a Repo Transaction in the DVP service.[12] Specifically, dealer accounts would be charged a fee of $0.04 per million par value for transaction processing, and broker accounts would be charged a fee of $0.02 per million par value for transaction processing.[13]

FICC also would add two position management fees applicable to the DVP service in proposed Section II of the GSD Fee Structure.[14] The first position management fee would be the intraday position fee of $0.04 per million par value that would be calculated for a Member each business day based on the largest gross position of the Member (including positions of any non-Member that the Member is clearing for) that business day.[15] FICC states that it would determine the gross position of a Member in 15-minute intervals between 9:00 a.m. and 4:00 p.m. each business day by netting the par value of all compared buy/sell transactions, Repo Transactions, and unsettled obligations of the Member (including any such activity submitted by the Member for a

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12 Id.

13 Id. Broker accounts submit two sides per transaction. Id. As such, a broker account would be charged a total of $0.04 per million par value (i.e., $0.02 per million par value times two) for each transaction. Id.

14 Notice, 83 FR at 20882.

15 Id.

non-Member that the Member is clearing for) by CUSIP number and taking the sum of the absolute par value of each such CUSIP number.[16]

The second position management fee would be the end of day position fee of $0.115 per million par value that would be calculated for a Member each business day based on the end of day gross position of the Member (including positions of any non-Member that the Member is clearing for) that business day.[17] FICC states that it would determine the end of day gross position of a Member by netting the par value of all compared buy/sell transactions, Repo Transactions, and unsettled obligations of the Member (including any such activity submitted by the Member for a non-Member that the Member is clearing for) at the end of the business day by CUSIP number and taking the sum of the absolute par value of each such CUSIP number.[18]

2. Modified Existing Fee

FICC would modify the existing minimum monthly fee in proposed Section V of the GSD Fee Structure.[19] The minimum monthly fee would be increased from $1,000 to $2,500 per account and would apply to all accounts of every comparison-only Member and netting Member instead of just their sole or primary account.[20] FICC states that it is

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[16] Id.

[17] Id. at 20884–85.

[18] Id. at 20885.

[19] Id.

[20] Id. The minimum monthly fee would apply to all accounts of a netting Member, including any account the netting Member may have as a sponsoring Member. Id.

proposing to increase the minimum monthly fee to $2,500 per account because FICC believes this change would better reflect GSD's costs of account monitoring.[21]

3. Eliminated Fees

FICC is proposing to delete fees in Section I of the GSD Fee Structure that are no longer applicable.[22] Specifically, FICC is proposing to delete Section I.B. of the GSD Fee Structure, which imposes certain surcharges on Members submitting trade data to GSD using submission methods other than the Interactive Submission Method (e.g., the Multiple Batch Submission Method or the Single Batch Submission Method).[23] FICC states that these surcharges are no longer required because all Members currently submit trade data to GSD using the Interactive Submission Method, and FICC does not expect that to change in the future because of technological advancements in real-time trade submission capability across the financial industry.[24] FICC would also make conforming re-lettering of the subsequent provisions in Section I of the GSD Fee Structure.[25]

FICC would eliminate all netting fees provided in renumbered Section IV of the GSD Fee Structure, including (i) the two seven-tiered netting fees for both broker accounts and dealer accounts; (ii) the "into the net" fees of $0.015 per one million of par value for broker accounts and $0.016 per one million of par value for dealer accounts for each compared trade, start leg of a Repo Transaction, close leg of a Repo Transaction,

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21 Notice, 83 FR at 20885.

22 Id. at 20884.

23 Id.

24 Id.

25 Id.

fail deliver obligation, and fail receive obligation; and (iii) the "out of the net" fees of $0.175 per one million of par value for each deliver obligation and receive obligation created as a result of the netting process.[26]

In addition, FICC would delete from renumbered Section IV.C. of the GSD Fee Structure the Repo Transaction processing fees and related language for Term Repo Transactions in the DVP service that have been compared and netted but not yet settled.[27] FICC states that this would no longer separate the Repo Transaction processing fees for Term Repo Transactions.[28] Rather, FICC states that the Term Repo Transactions would be assessed the proposed position management fees, just like overnight Repo Transactions and buy/sell transactions.[29]

Additionally, FICC would eliminate fees applicable to additional accounts from current Section V of the GSD Fee Structure.[30] FICC currently differentiates its fees based on whether an account is a Member's primary or secondary account. FICC would no longer draw this distinction. FICC states that eliminating fees applicable to additional accounts would reduce pricing complexity and thereby enhance pricing transparency

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26 Id. at 20885.

27 Id.

28 Id. The term "Term Repo Transaction" means, on any particular business day, a Repo Transaction for which settlement of the close leg is scheduled to occur two or more business days after the scheduled settlement of the start leg. See GSD Rule 1, Definitions, GSD Rules, supra note 5.

29 Notice, 83 FR at 20885.

30 Id.

because Members would no longer need to keep track of their primary versus secondary accounts.

4. Conforming, Clarifying, and Technical Changes

As described below, FICC proposes to make a number of conforming, clarifying, and technical changes.

First, FICC would rename the heading of Section I of the GSD Fee Structure from "Trade Comparison Fees" to "Transaction Fees."[31] FICC states that this would better reflect the proposed changes to that section, as described above.[32]

FICC would rename the heading of Section I.A. of the GSD Fee Structure from "Trade Submission" to "Transaction Processing."[33] In addition, FICC would make changes throughout Section I.A. of the GSD Fee Structure to clarify that references to a "trade" means a "buy/sell transaction."[34] FICC would also make a number of conforming changes in Section I.A. of the GSD Fee Structure.[35] Specifically, FICC would delete a reference to "submission fee" and replace it with "processing fee."[36] FICC would update the reference to "subsection D" to reflect the proposed re-lettering of that subsection.[37]

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31 Id. at 20886.

32 Id.

33 Id.

34 Id.

35 Id.

36 Id.

37 Id.

Additionally, FICC would update the format of (i) the "$.50" rejection fee to "$0.50" in Section I.A. of the GSD Fee Structure; (ii) the "15 cents" yield-to-price conversion charge to "$0.15" in the proposed Section I.B. of the GSD Fee Structure; (iii) the "25 cents" and "5 cents" modification/cancellation fees to "$0.25" and "$0.05," respectively, in the proposed Section I.C. of the GSD Fee Structure; (iv) the "25 cents" coupon pass-through fee to "$0.25" in the proposed Section I.D. of the GSD Fee Structure; (v) the "$.75" repurchase agreement collateral substitution fee to "$0.75" in the proposed Section I.E. of the GSD Fee Structure; (vi) the "$.07" and "$.025" recording fees to "$0.07" and "$0.025" in the proposed Section I.G. of the GSD Fee Structure; and (vii) the "$.07" recording fee to "$0.07" in the proposed Section I.H. of the GSD Fee Restructure, in order to be consistent with the format of the other fees in the GSD Fee Structure.[38]

FICC states that for better organization of the GSD Fee Structure, FICC would relocate current Sections III.B. (Auction Takedown Process), III.F. (Coupon Pass-Through Fee), and III.G. (Repo Collateral Substitution Fees), which cover fees associated with the Auction Takedown Service, pass-through of coupon payments, and the processing of repurchase agreement collateral substitution requests, to proposed Sections I.F., I.D., and I.E., respectively, of the GSD Fee Structure because each of these fees is a type of transaction fee.[39]

In addition, FICC would revise the section on Auction Takedown Process (proposed Section I.D. of the GSD Fee Structure) by replacing the words "locked-in

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38 Id.

39 Id.

trades" with "buy/sell transactions" because, FICC states, all trades associated with the Auction Takedown Service are locked-in.[40] FICC would change this section to reflect that, instead of the "Trade Submission" fees, fees for trades associated with the Auction Takedown Service would include the proposed "Transaction Processing" fees in Section I.A. of the GSD Fee Structure and the proposed "Position Management Fees" in Section II of the GSD Fee Structure.[41]

FICC would make a conforming change in the proposed Section I.G. of the GSD Fee Structure by deleting the reference to "Trade Submission" fee schedule and replacing it with "Transaction Processing" fees.[42]

FICC would renumber current Section II of the GSD Fee Structure to proposed Section III of the GSD Fee Structure.[43]

FICC would rename the heading of renumbered Section IV of the GSD Fee Structure from "Netting Fee and Charges (in addition to the comparison fee)" to "Other Charges (in addition to the transaction fees)" to, FICC states, better reflect the proposed changes to this section, as described above.[44]

As described above, FICC would relocate current Sections III.B. (Auction Takedown Process), III.F. (Coupon Pass-Through Fee), and III.G. (Repo Collateral Substitution Fees) to proposed Sections I.F., I.D., and I.E., respectively, of the GSD Fee

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40 Id.

41 Id.

42 Id.

43 Id.

44 Id.

Structure.[45] These proposed changes would necessitate a re-lettering of all subsequent provisions in renumbered Section IV of the GSD Fee Structure.[46]

In addition, FICC would rename the heading of renumbered Section IV.C. of the GSD Fee Structure from "Repo Transaction Processing Fee" to "GCF Repo Transaction and CCIT Transaction Processing Fee" to better reflect the proposed changes to this section.[47] FICC would make two conforming changes: (i) relocate and update the reference to "Repo Broker" definition to appear right after the first usage of "Repo Broker" in this section; and (ii) reflect the remaining fee in renumbered Section IV.C. of the GSD Fee Structure in a singular form.[48]

In addition, FICC would make a conforming change in renumbered Section IV.D. of the GSD Fee Structure to reflect the proposed renumbering of sections in the GSD Fee Structure by changing a reference from "Section III" to "Section IV."[49]

FICC would add a sentence to proposed Section V of the GSD Fee Structure that, FICC states, would make it clear to Members that the minimum monthly fee would not apply to an account if the total monthly fees incurred by the account pursuant to Sections I, II (a proposed new section), and IV (renumbered from III) of the GSD Fee Structure exceed $2,500.[50]

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45 Id.

46 Id.

47 Id.

48 Id.

49 Id.

50 Id.

FICC would make changes in Section VI of the GSD Fee Structure to, FICC states, clarify that references to "trades" means "buy/sell transactions and Repo Transactions."[51]

FICC would make two changes to Section VII of the GSD Fee Structure. FICC would delete the reference to the fee for additional accounts, which is being eliminated under the proposal.[52] FICC states that the second change would make it clear that a sponsoring Member would be subject to the minimum monthly fee set forth in proposed Section V of the GSD Fee Structure.[53] FICC states that this proposed change would make it clear to a sponsoring Member that its sponsoring Member omnibus account would be subject to the minimum monthly fee.[54]

In current Section VIII of the GSD Fee Structure, FICC would (i) make a technical change to reflect the reference to the GSD Fee Structure as "Fee Structure" instead of "fee structure," and (ii) make changes to clarify that references to a "trade" means a "buy/sell transaction."[55] In addition, FICC would clarify that a CCIT Transaction, like a Term GCF Repo Transaction, would be considered to have one Start Leg and one Close Leg during its term.[56]

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51 Id.

52 Id.

53 Id. at 20886–87.

54 Id. at 20887.

55 Id.

56 Id.

FICC would make a conforming change in current Section XII of the GSD Fee Structure by deleting the reference to "comparison and netting fees" and replacing it with "transaction fees."[57] In addition, FICC would make a technical change by deleting the outdated reference to "Operations and Planning Committee" and replacing it with Board, which is defined in GSD Rule 1 (Definitions) as "the Board of Directors of Fixed Income Clearing Corporation or a committee thereof acting under delegated authority."[58]

FICC plans to implement all of the above proposed changes on July 2, 2018.[59]

II. Summary of Comment Received

The Commission received one comment letter to the proposed rule change.[60] The Nasdaq Letter supports the proposed rule change. Specifically, Nasdaq states that it "supports the [proposed rule change] because it: (1) simplifies and adds transparency to FICC's fee schedule; (2) introduces a sensible risk-based fee model; and (3) permits and incentivizes more market participants to utilize central clearing for U.S. Treasury Securities…."[61] Nasdaq further states that the proposed rule change would likely result in more widespread use of FICC's central clearing services, reducing systemic risk by moving the industry closer to comprehensive central clearing.[62] Nasdaq states that more widespread industry use of FICC's central clearing services would also increase overall

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57 Id.

58 Id.; see GSD Rule 1, GSD Rules, supra note 5.

59 Id. at 20887.

60 Nasdaq Letter, supra note 4.

61 Id. at 1.

62 Id. at 1–2.

transparency of trade reporting data of U.S. Treasury securities.[63] Additionally, Nasdaq believes that the proposed rule change would advance the goals articulated in the October 2017 report by the U.S. Department of the Treasury on U.S. Capital Markets[64] by reforming FICC's fee structure to make it more simple, clear, transparent, and understandable to market participants and regulators.[65]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization.[66] After carefully considering the proposed rule change and the comment letter received, the Commission finds that the proposed rule change is consistent with Act, specifically Sections 17A(b)(3)(D)[67] and 17A(b)(3)(F)[68] of the Act and Rule 17Ad-22(e)(23)(ii)[69] under the Act.

A.

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63 Id. at 2.

64 See U.S. Department of the Treasury, A Financial System That Creates Economic Opportunities: Capital Markets (October 2017), available at https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf.

65 Nasdaq Letter at 1–2.

66 15 U.S.C. 78s(b)(2)(C).

67 15 U.S.C. 78q-1(b)(3)(D).

68 15 U.S.C. 78q-1(b)(3)(F).

69 17 CFR 240.17Ad-22(e)(23)(ii).

Section 17A(b)(3)(D) of the Act

Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency, such as FICC, provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[70]

As discussed above, the proposed rule change would make a number of changes to the GSD Fee Structure. Specifically, FICC would, in effect, create 4 new fees, modify 1 existing fee, and eliminate 12 fees. The proposed fee changes are designed, in part, to (i) shift the GSD Fee Structure regarding the DVP service away from a transaction or volume-driven approach to a more position-based approach, and (ii) align GSD's revenue with the approximate 30/70 split between transaction processing and position management costs, respectively. Despite the proposed changes, FICC expects GSD's net revenue to remain relatively unchanged as a result of this proposal.

The Commission believes that adding the 4 proposed fees and eliminating the 12 existing fees is equitable and reasonable because these changes are designed to apply to all Members in a manner that better aligns the fees (i.e., fees associated with the DVP service as well as the minimum monthly fee) with the costs attributed to GSD's management of Members' DVP positions and account monitoring. Under the proposed changes, a Member whose DVP positions result in higher position management costs to GSD would be charged a relatively higher fee because the higher fee would be reflective of the higher costs to GSD in managing those positions. On the other hand, a Member whose DVP positions require less management by GSD would be charged a lower fee because the lower fee would be reflective of the lower costs to GSD in managing those

70 15 U.S.C. 78q-1(b)(3)(D).

positions. In addition, taken collectively, the proposed fee changes are designed to maintain GSD's existing revenue derived from fees associated with the DVP service.

With respect to the proposed modification to the minimum monthly fee, each account of every comparison-only Member and every netting Member would be subject to a minimum monthly fee of $2,500. This proposed fee is designed to be commensurate with the minimum costs to FICC associated with monitoring a Member's account.

Therefore, for the above reasons, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act, as the proposal would provide for the equitable allocation of reasonable dues, fees, and other charges among Members.

B. <u>Section 17A(b)(3)(F) of the Act</u>

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency, such as FICC, be designed to promote the prompt and accurate clearance and settlement of securities transactions.[71]

As described above, FICC proposes to, effectively, establish 4 new fees, modify 1 existing fee, eliminate 12 fees, and make conforming, clarifying, and technical changes to the GSD Rules. These proposed changes are designed to reduce the complexity of the GSD Fee Structure by helping to ensure that the GSD Fee Structure is more transparent and clear to Members.[72] Providing more transparent and clear terms and descriptions in the GSD Fee Structure would help Members better understand GSD's fees and provide increased predictability and certainty regarding the fees Members incur. This increased

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[71] 15 U.S.C. 78q-1(b)(3)(F).

[72] <u>See also</u> Nasdaq Letter at 1–2 (supporting the proposed rule change because it renders FICC's fee schedule more simple, clear, transparent, and understandable to market participants).

understanding, predictability, and certainty could, in turn, help Members satisfy their obligations to FICC more easily, which would help promote the prompt and accurate clearance and settlement of securities transactions.[73] Accordingly, the Commission believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

C. Rule 17Ad-22(e)(23)(ii) under the Act

Rule 17Ad-22(e)(23)(ii) under the Act requires each covered clearing agency[74] to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.[75]

As described above, FICC proposes to, effectively, establish 4 new fees, modify 1 existing fee, eliminate 12 fees, and make conforming, clarifying, and technical changes to the GSD Rules. These proposed changes are designed to reduce the complexity of the GSD Fee Structure by helping to ensure that the GSD Fee Structure is more transparent and clear to Members. Having a more transparent and clear GSD Fee Structure would

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73 See also Nasdaq Letter at 2 (arguing that FICC's efforts to simplify its fee structure would encourage more widespread central clearing among market participants).

74 A "covered clearing agency" means, among other things, a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q-1 et seq.) that is designated systemically important by Financial Stability Oversight Council ("FSOC") pursuant to the Clearing Supervision Act (12 U.S.C. 5461 et seq.). See 17 CFR 240.17Ad-22(a)(5)-(6). Because FICC is a registered clearing agency with the Commission that has been designated systemically important by FSOC, FICC is a covered clearing agency.

75 17 CFR 240.17Ad-22(e)(23)(ii).

help Members and other stakeholders to better understand GSD's fees and help provide Members with increased predictability and certainty regarding the fees they incur in participating in GSD.[76] As such, the Commission believes that the proposed rule change is consistent with Rule 17Ad-22(e)(23)(ii) under the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act[77] and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR-FICC-2018-003 be, and hereby is, APPROVED.[78]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[79]

Eduardo A. Aleman,
Assistant Secretary.

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76 See also Nasdaq Letter at 1–2 (supporting the proposed rule change because it renders FICC's fee schedule more simple, clear, transparent, and understandable to market participants).

77 15 U.S.C. 78q-1.

78 In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

79 17 CFR 200.30-3(a)(12).

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