

Office of the Secretary at (202) 551-5400.

Dated: July 23, 2018.

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83682; File No. SR-FICC-2018-005]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Correct Certain References and Provide Transparency to Existing Processes in the Mortgage-Backed Securities Division Electronic Pool Notification Rules

July 20, 2018.

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 July 13, 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 consists of amendments to the FICC Mortgage-Backed Securities Division (“MBSD”) electronic pool notification (“EPN”) Rules (the “EPN Rules”)³ as described below.

FICC is proposing to correct the EPN Rules by amending several references in the section of the EPN Rules entitled “FICC Mortgage-Backed Securities Division (“MBSD”) EPN Schedule of Charges.” Specifically, FICC is proposing to replace the references to “FICC” with “the Corporation.” FICC is proposing this change because “FICC” is not a term that is defined in the EPN Rules. In addition, FICC is proposing to replace the reference to “The Depository Trust Corporation” with “The Depository Trust & Clearing

Corporation.” FICC is proposing this change because the reference to “The Depository Trust Corporation” is an error.

FICC is also proposing to amend *Article III (EPN Users)* of the EPN Rules to set forth MBSD’s existing practices. Specifically, FICC is proposing to include an EPN User’s ongoing obligation to notify FICC if such EPN User no longer complies with the requirements for admission to membership in the EPN Rules (*i.e.*, as set forth in Secs. 2 (Approval of Applicants) and 3 (Agreements of EPN Users) of EPN Rule 1 (Requirements Applicable to EPN Users) of *Article III (EPN Users)*). In addition, FICC is proposing to amend *Article III (EPN Users)* to define specific circumstances where FICC would undertake action to determine the status of an EPN User and its continued access to the EPN system. The proposed change would also state that FICC may request that an EPN User provide written assurances if FICC believes such EPN User may fail to comply with the EPN Rules. The proposed changes to *Article III (EPN Users)* would necessitate a new defined term in *Article I (Definitions and General Provisions)* of the EPN Rules.

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

FICC is proposing to correct the EPN Rules by amending several references in the section of the EPN Rules entitled “FICC Mortgage-Backed Securities Division (“MBSD”) EPN Schedule of Charges.” Specifically, FICC is proposing to replace the references to “FICC” with “the Corporation.” FICC is proposing this change because “FICC” is not a term that is defined in the EPN Rules. In addition, FICC is proposing to replace the reference to “The Depository Trust Corporation” with “The Depository Trust & Clearing Corporation.” FICC is proposing this

change because the reference to “The Depository Trust Corporation” is an error.

FICC is also proposing to amend *Article III (EPN Users)* of the EPN Rules to set forth MBSD’s existing practices. Specifically, FICC is proposing to include an EPN User’s ongoing obligation to notify FICC if such EPN User no longer complies with the requirements for admission to membership in the EPN Rules (*i.e.*, as set forth in Secs. 2 (Approval of Applicants) and 3 (Agreements of EPN Users) of EPN Rule 1 (Requirements Applicable to EPN Users) of *Article III (EPN Users)*). In addition, FICC is proposing to amend *Article III (EPN Users)* to define specific circumstances where FICC would undertake action to determine the status of an EPN User and its continued access to the EPN system. The proposed change would also state that FICC may request that an EPN User provide written assurances if FICC believes such EPN User may fail to comply with the EPN Rules. The proposed changes to *Article III (EPN Users)* would necessitate a new defined term in *Article I (Definitions and General Provisions)* of the EPN Rules.

The proposed changes are described below.

1. MBSD’s EPN Service

MBSD’s electronic pool notification service (referred to in the EPN Rules as the “EPN Service”) enables users to reduce risk and streamline their operations by providing an automated manner for market participants that have an obligation to deliver pools (“pool sellers”) to transmit pool information efficiently and reliably to their counterparties (“pool buyers”) in real time. Market participants that wish to utilize the EPN Service are required to submit an application to MBSD. The application process and the use of the EPN Service are governed by the EPN Rules.⁴ MBSD’s Clearing Members are required to be EPN Users; however, one can be an EPN User and not a Clearing Member.⁵

⁴ See EPN Rules Article III (EPN Users), EPN Rule 1 (Requirements Applicable to EPN Users), *supra* note 3.

⁵ MBSD maintains two sets of rulebooks. The EPN Rules govern MBSD’s EPN Service and the MBSD Clearing Rules (the “MBSD Rules”) govern MBSD’s clearance and settlement service. The MBSD Rules are available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf. Pursuant to the MBSD Rules, the term “Clearing Member” means any entity admitted into membership pursuant to MBSD Rule 2A. See MBSD Rule 1, Definitions.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Terms not defined herein are defined in the EPN Rules, available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_mbsd_epnrules.pdf.

2. Proposed Changes To Make Corrections to the EPN Rules

FICC is proposing to correct several references in the EPN Rules because the proposed changes would help to ensure that the EPN Rules are clear and accurate. Specifically, FICC is proposing to correct the section entitled “*FICC Mortgage-Backed Securities Division (“MBSD”) EPN Schedule of Charges*” in order to replace the references to “FICC” with “the Corporation.” FICC is proposing this change because “FICC” is not a term that is defined in the EPN Rules. In addition, FICC is also proposing to replace the reference to “The Depository Trust Corporation” with “The Depository Trust & Clearing Corporation.” FICC is proposing this change because the reference to “The Depository Trust Corporation” is an error.

3. Proposed Changes To Amend the EPN Rules To Include an EPN User’s Ongoing Reporting Obligations

FICC’s existing practice is to require EPN Users to report certain information to FICC. In addition, if FICC learns of information that leads FICC to believe an EPN User is not in compliance with the EPN Rules, FICC will assess whether such EPN User is in compliance with the EPN Rules and may request that an EPN User provide written assurances that such EPN User will not violate the EPN Rules. FICC is proposing to amend the EPN Rules to reflect these practices.

First, FICC is proposing to amend EPN Rule 1 (Requirements Applicable to EPN Users) of *Article III (EPN Users)* to include a provision that would be numbered “Sec. 8. General Continuance Standards.” This section would state that an EPN User shall promptly inform FICC, both orally and in writing, if such EPN User no longer complies with any of the requirements for admission to membership set forth in the EPN Rules (*i.e.*, as set forth in Secs. 2 (Approval of Applicants) and 3 (Agreements of EPN Users) of EPN Rule 1 (Requirements Applicable to EPN Users) of *Article III (EPN Users)*). The referenced notification must take place within two Business Days from the date on which the EPN User first learns of its non-compliance.

Next, FICC is proposing to amend the EPN Rules to have the new “General Continuance Standards” state that an EPN User shall notify FICC within two Business Days of learning of an investigation or proceeding to which it is, or is becoming, subject that would cause the EPN User to fall out of compliance with any of the requirements for membership set forth

in the EPN Rules (*i.e.*, as set forth in Secs. 2 (Approval of Applicants) and 3 (Agreements of EPN Users) of EPN Rule 1 (Requirements Applicable to EPN Users) of *Article III (EPN Users)*). However, the EPN User would not be required to notify FICC if doing so would cause the EPN User to violate an applicable law, rule, or regulation.

4. Proposed Changes To Amend the EPN Rules To Define Circumstances Under Which FICC May Determine an EPN User’s Compliance With the EPN Rules

FICC is also proposing that the new “General Continuance Standards” state that FICC would undertake action to determine the status of an EPN User and its continued access to the EPN system if:

(a) An EPN User fails to maintain the requirements for admission to membership, including but not limited to operational testing and related reporting requirements imposed by FICC from time to time;

(b) an EPN User violates any EPN Rule or other agreement with FICC;

(c) an EPN User fails to satisfy in a timely manner any obligation to FICC;

(d) there is a Reportable Event (as defined below); or

(e) FICC otherwise deems it necessary or advisable, in order to protect FICC, its other EPN Users, or its creditors or investors, to safeguard securities and funds in the custody or control of FICC, or to promote the prompt and accurate processing, clearance or settlement of securities transactions.

In connection with clause (d) above, FICC proposes to define a reportable event (“Reportable Event”) in EPN Rule 1 (Definitions) of *Article I (Definitions and General Provisions)* as an event that would effect a change in control of an EPN User or could have a substantial impact on such EPN User’s business and/or financial condition, including, but not limited to: (i) Material organizational changes including mergers, acquisitions, changes in corporate form, name changes, changes in the ownership of an EPN User or its affiliates, and material changes in management, and (ii) status as a defendant in litigation, which could reasonably impact the EPN User’s financial condition or ability to conduct business. The proposed “General Continuance Standards” section would also require an EPN User to submit written notice to FICC of a Reportable Event at least 90 calendar days prior to the effective date of such Reportable Event unless the EPN User demonstrates that it could not have reasonably done

so, and provided notice, both orally and in writing, to FICC as soon as possible.

Additionally, FICC is proposing that the proposed “General Continuance Standards” section state that, if FICC has reason to believe that an EPN User may fail to comply with any of the EPN Rules, FICC may require the EPN User to provide written assurances. Specifically, FICC may require such assurances, within such timeframe, in such detail, and pursuant to such manner as FICC shall determine, in writing of a credible nature that the EPN User shall not, in fact, violate any of the EPN Rules. These assurances could include, but would not be limited to, notarized statements, affidavits and/or officers’ certificates.

In order to accommodate the proposed “General Continuance Standards” section as described in this subsection 4 and in subsection 3 above, FICC is proposing to change the numbering of the existing “Confidentiality” provision in EPN Rule 1 (Requirements Applicable to EPN Users) of *Article III (EPN Users)* from “Sec. 8” to “Sec. 9.”

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the EPN Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.⁶

The proposed change to correct references in the section of the EPN Rules entitled “*FICC Mortgage-Backed Securities Division (“MBSD”) EPN Schedule of Charges*” (as described above in subsection 2 of Item II(A)1) would help to ensure that the EPN Rules are accurate and clear to EPN Users. As such, FICC believes that the proposed change would allow EPN Users to have a better understanding of the EPN Rules and thereby assist in promoting the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.⁷

The proposed changes to (i) include an EPN User’s ongoing obligation to notify FICC if such EPN User no longer complies with the requirements for admission to membership as set forth in the EPN Rules (as described above in subsection 3 of Item II(A)1), (ii) define specific circumstances where FICC would undertake action to determine the status of an EPN User and its continued access to the EPN system (as described above in subsection 4 of Item II(A)1), and (iii) state that FICC may request that an EPN User provide

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ *Id.*

written assurances if FICC believes such EPN User may fail to comply with the EPN Rules (as described above in subsection 4 of Item II(A)1) would provide clarity to EPN Users by setting forth in the EPN Rules FICC's existing practice. FICC believes this clarity would help to ensure that EPN Users are fully aware of their rights and obligations. The proposed changes would also help to ensure that FICC is promptly made aware in the event that an EPN User's access to the EPN Service should be reassessed due to an EPN User's possible violation of the EPN Rules. Because the proposed rule changes are designed to help ensure that EPN Users remain compliant with the EPN Rules, FICC believes that the proposed changes would help FICC protect the EPN Service. As the EPN Service is an important aspect of MBSD's clearance and settlement services, these proposed changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.⁸

Rule 17Ad-22(e)(18) under the Act requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to monitor compliance with participation requirements on an ongoing basis.⁹ As described above, the proposed rule changes to amend the EPN Rules to (i) include an EPN User's ongoing reporting obligations (as described above in subsection 3 of Item II(A)1) and (ii) define circumstances under which FICC may determine an EPN User's compliance with the EPN Rules (as described above in subsection 4 of Item II(A)1) would help to ensure that FICC is promptly made aware in the event that an EPN User's access to the EPN Service should be reassessed due to an EPN User's possible violation of EPN Rules. Because the proposed changes give FICC the ability to monitor an EPN User's compliance with the EPN Rules, FICC believes the proposed changes to (i) include an EPN User's ongoing reporting obligations and (ii) define circumstances under which FICC may determine an EPN User's compliance with the EPN Rules are consistent with Rule 17Ad-22(e)(18).¹⁰

Rule 17Ad-22(e)(23)(i) under the Act requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for publicly disclosing all relevant rules

and material procedures.¹¹ As described above, the proposed rule changes to amend the EPN Rules to (i) make corrections (as described above in subsection 2 of Item II(A)1), (ii) include an EPN User's ongoing reporting obligations (as described above in subsection 3 of Item II(A)1), and (iii) define circumstances under which FICC may determine an EPN User's compliance with the EPN Rules (as described above in subsection 4 of Item II(A)1) would better publicly disclose all relevant and material procedures regarding the EPN Service. Therefore, FICC believes the proposed changes to correct and codify FICC's existing practices in the EPN Rules are consistent with Rule 17Ad-22(e)(23)(i).¹²

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

FICC does not believe that the proposed changes to correct references in the section of the EPN Rules entitled "*FICC Mortgage-Backed Securities Division ("MBSD") EPN Schedule of Charges*" (as described above in subsection 2 of Item II(A)1) would impact competition because the proposed changes correct errors in the EPN Rules and do not affect FICC's operations or the rights and obligations of EPN Users.

FICC does not believe that the proposed changes to (i) include an EPN User's ongoing obligation to notify FICC if such EPN User no longer complies with the requirements for admission to membership in the EPN Rules (as described above in subsection 3 of Item II(A)1), (ii) define specific circumstances where FICC would undertake action to determine the status of an EPN User and its continued access to the EPN system (as described above in subsection 4 of Item II(A)1), and (iii) state that FICC may request that an EPN User provide written assurances if FICC believes such EPN User may fail to comply with the EPN Rules (as described above in subsection 4 of Item II(A)1) would impact competition because the proposed changes would codify FICC's existing practices in the EPN Rules. The proposed changes would apply equally to all EPN Users and would not affect FICC's operations. As a result, FICC believes the proposed rule change would not have any impact 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:

(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 email to rule-comments@sec.gov. Please include File Number SR-FICC-2018-005 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-2018-005. This file number should be included on the subject line if email 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

⁸ *Id.*

⁹ 17 CFR 240.17Ad-22(e)(18).

¹⁰ *Id.*

¹¹ 17 CFR 240.17Ad-22(e)(23)(i).

¹² *Id.*

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-2018-005 and should be submitted on or before August 16, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83681; File No. SR-BX-2018-025]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing of Proposed Rule Change To Make Permanent the Pilot Program for the Exchange's Retail Price Improvement Program

July 20, 2018.

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 July 9, 2018, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal to make permanent the pilot program for

the Exchange's Retail Price Improvement ("RPI") Program (the "Program"), which is set to expire the earlier of approval of the filing to make this rule permanent or December 31, 2018.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make permanent the Exchange's pilot RPI Program,³ currently scheduled to expire the earlier of approval of the filing to make this rule permanent or December 31, 2018.

Background

In November 2014, the Commission approved the RPI Program on a pilot basis.⁴ The Program is designed to attract retail order flow to the Exchange, and allow such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, a class of market participant called a Retail Member Organization ("RMO") is eligible to submit certain retail order flow ("Retail Orders")⁵ to

the Exchange. BX members ("Members") are permitted to provide potential price improvement for Retail Orders in the form of non-displayed interest that is priced more aggressively than the Protected National Best Bid or Offer ("Protected NBBO").⁶

The Program was approved by the Commission on a pilot basis running one-year from the date of implementation.⁷ The Commission approved the Program on November 28, 2014.⁸ The Exchange implemented the Program on December 1, 2014 and the pilot has since been extended for a one-year period twice, as well as for a six-month period, with it now scheduled to expire the earlier of approval of the filing to make this rule permanent or December 31, 2018.⁹

Specifically, BX Rule 4780(h) will be amended to delete that the Program is a pilot and that is scheduled to expire the earlier of approval of the filing to make this rule permanent or December 31, 2018. BX Rule 4780(h) will continue to say that the Program will be limited to securities whose Bid Price on the Exchange is greater than or equal to \$1.00 per share.

The SEC approved the Program pilot, in part, because it concluded, "the Program is reasonably designed to benefit retail investors by providing price improvement to retail order flow."¹⁰ The Commission also found that "while the Program would treat retail order flow differently from order flow submitted by other market participants, such segmentation would not be inconsistent with Section 6(b)(5) of the Act, which requires that the rules

in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology.

⁶ The term Protected Quotation is defined in Chapter XII, Sec. 1(19) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The Protected NBBO is the best-priced protected bid and offer. Generally, the Protected NBBO and the national best bid and offer ("NBBO") will be the same. However, a market center is not required to route to the NBBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBBO is otherwise not available for an automatic execution. In such case, the Protected NBBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

⁷ See RPI Approval Order, *supra* note 3 at 72053.

⁸ *Id.* at 72049.

⁹ See Securities Exchange Act Release No. 76490 (November 20, 2015), 80 FR 74165 (November 27, 2015) (SR-BX-2015-073); Securities Exchange Act Release No. 79446 (December 1, 2016), 81 FR 88290 (December 7, 2016) (SR-BX-2016-065); Securities Exchange Act Release No. 82192 (December 1, 2017), 82 FR 57809 (December 7, 2017) (SR-BX-2017-055); and Securities Exchange Act Release No. 83539 (June 28, 2018), 83 FR 31203 (July 3, 2018) (SR-BX-2018-026).

¹⁰ See RPI Approval Order, *supra* note 3 at 72051.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 73702 (November 28, 2014), 79 FR 72049 (December 4, 2014) (SR-BX-2014-048) ("RPI Approval Order").

⁴ See *id.*

⁵ A "Retail Order" is defined in BX Rule 4780(a)(2) by referencing BX Rule 4702, and BX Rule 4702(b)(6) says it is an order type with a non-display order attribute submitted to the Exchange by a RMO. A Retail Order must be an agency order, or riskless principal order that satisfies the criteria of FINRA Rule 5320.03. The Retail Order must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except