

Commission, Office of FOIA Services,  
100 F Street NE, Washington, DC  
20549-2736

**Extension:**

Rule 17Ad-13, SEC File No. 270-263;  
OMB Control No. 3235-0275

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information provided for in Rule 17Ad-13 (17 CFR 240.17Ad-13). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 17Ad-13 (17 CFR 240.17Ad-13) requires an annual study and evaluation of internal accounting controls under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). It requires approximately 100 registered transfer agents to obtain an annual report on the adequacy of their internal accounting controls from an independent accountant. In addition, transfer agents must maintain copies of any reports prepared pursuant to Rule 17Ad-13 plus any documents prepared to notify the Commission and appropriate regulatory agencies in the event that the transfer agent is required to take any corrective action. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. Small transfer agents are exempt from Rule 17Ad-13 as are transfer agents that service only their own companies’ securities.

Approximately 100 independent, professional transfer agents must file the independent accountant’s report annually. We estimate that the annual internal time burden for each transfer agent to comply with Rule 17Ad-13 by submitting the report prepared by the independent accountant to the Commission is minimal. The time required for the independent accountant to prepare the accountant’s report varies with each transfer agent depending on the size and nature of the transfer agent’s operations. The Commission estimates that, on average, each report can be completed by the independent accountant in 120 hours, resulting in a total of 12,000 external hours annually (120 hours × 100 reports). The burden was estimated using Commission review of filed Rule 17Ad-13 reports and Commission conversations with transfer agents and accountants. The Commission estimates that, on average, 120 hours are needed to perform the study, prepare the report, and retain the

required records on an annual basis. Assuming an average hourly rate of an independent accountant of \$60, the average total annual cost of the report is \$7,200. The total annual cost for the approximate 100 respondents is approximately \$720,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have any practical utility; (b) the accuracy of the agency’s estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington DC 20549, or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: September 7, 2018.

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-586, OMB Control No. 3235-0647]

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

**Extension:**

Rule 204

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information provided for in Rule 204 (17 CFR

242.204) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 204(a) provides that a participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date, or if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in the equity security, the participant shall, by no later than the beginning of regular trading hours on the applicable close-out date, immediately close out its fail to deliver positions by borrowing or purchasing securities of like kind and quantity. For a short sale transaction, the participant must close out a fail to deliver by no later than the beginning of regular trading hours on the settlement day following the settlement date. If a participant has a fail to deliver that the participant can demonstrate on its books and records resulted from a long sale, or that is attributable to bona-fide market making activities, the participant must close out the fail to deliver by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date. Rule 204 is intended to help further the Commission’s goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission. In addition, Rule 204 is intended to help further the Commission’s goal of addressing potentially abusive “naked” short selling in all equity securities.

The information collected under Rule 204 will continue to be retained and/or provided to other entities pursuant to the specific rule provisions and will be available to the Commission and self-regulatory organization (“SRO”) examiners upon request. The information collected will continue to aid the Commission and SROs in monitoring compliance with these requirements. In addition, the information collected will aid those subject to Rule 204 in complying with its requirements. These collections of information are mandatory.

Several provisions under Rule 204 will impose a “collection of information” within the meaning of the Paperwork Reduction Act.

**I. Allocation Notification Requirement:** As of December 31, 2017,

there were 3,893 registered broker-dealers. Each of these broker-dealers could clear trades through a participant of a registered clearing agency and, therefore, become subject to the notification requirements of Rule 204(d). If a participant allocates a fail to deliver position to a broker or dealer pursuant to Rule 204(d), the broker or dealer that has been allocated the fail to deliver position in an equity security must determine whether or not such fail to deliver position was closed out in accordance with Rule 204(a). If such broker or dealer does not comply with the provisions of Rule 204(a), such broker or dealer must immediately notify the participant that it has become subject to the requirements of Rule 204(b). We estimate that a broker or dealer could have to make such determination and notification with respect to approximately 1.76 equity securities per day.<sup>1</sup> We estimate a total of 1,719,772 potential notifications in accordance with Rule 204(d) across all registered broker-dealers (that could be allocated responsibility to close out a fail to deliver position) per year (3,893 registered broker-dealers notifying participants once per day<sup>2</sup> on 1.76 equity securities, multiplied by 251 trading days in 2017). The total estimated annual burden hours per year will be approximately 275,164 burden hours (1,719,772 multiplied by 0.16 hours/notification).

**II. Demonstration Requirement for Fails to Deliver on Long Sales:** As of December 5, 2017, there were 132 participants of NSCC that were registered as broker-dealers. If a participant of a registered clearing agency has a fail to deliver position in an equity security at a registered clearing agency and determined that such fail to deliver position resulted from a long sale, we estimate that a participant of a registered clearing agency will have to make such determination with respect to approximately 33 securities per day.<sup>3</sup>

<sup>1</sup> The Commission's Division of Economic and Risk Analysis ("DERA") estimates that there were approximately 6,868 average daily fail to deliver positions during 2017. Across 3,893 registered broker-dealers, the number of securities per registered broker-dealer per trading day is approximately 1.76 equity securities.

<sup>2</sup> Because failure to comply with the close-out requirements of Rule 204(a) is a violation of the rule, we believe that a broker or dealer would make the notification to a participant that it is subject to the borrowing requirements of Rule 204(b) at most once per day.

<sup>3</sup> DERA estimates that during 2017 approximately 62.93% of trade volume was long. DERA estimates that there were approximately 6,868 average daily fail to deliver positions during 2017. Across 132 broker-dealer participants of the NSCC, the number of securities per participant per day is

We estimate a total of 1,093,356 potential demonstrations in accordance with Rule 204(a)(1) across all broker-dealer participants per year (132 participants checking for compliance once per day on 33 securities, multiplied by 251 trading days in 2017). The total approximate estimated annual burden hour per year will be approximately 174,937 burden hours (1,093,356 multiplied by 0.16 hours/documentation).

**III. Pre-Borrow Notification Requirement:** As of December 5, 2017, there were 132 participants of NSCC that were registered as broker-dealers. If a participant of a registered clearing agency has a fail to deliver position in an equity security, the participant must determine whether or not the fail to deliver position was closed out in accordance with Rule 204(a). We estimate that a participant of a registered clearing agency will have to make such determination with respect to approximately 52 equity securities per day.<sup>4</sup> We estimate a total of 1,722,864 potential notifications in accordance with Rule 204(c) across all participants per year (132 broker-dealer participants notifying broker-dealers once per day on 52 securities, multiplied by 251 trading days in 2017). The total estimated annual burden hours per year will be approximately 275,658 burden hours (1,722,864 multiplied by 0.16 hours/documentation).

**IV. Certification Requirement:** As of December 31, 2017, there were 3,893 registered broker-dealers. Each of these broker-dealers may clear trades through a participant of a registered clearing agency. If the broker-dealer determines that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or has purchased or borrowed securities in accordance with the pre-fail credit provision of Rule 204(e), we estimate that a broker-dealer could have to make such determination with respect to approximately 1.76 securities per day.<sup>5</sup> We estimate that registered broker-dealers could have to certify to the participant that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or, alternatively, that it

approximately 52 equity securities. 62.93% of 52 equity securities per trading day equals approximately 33 securities per day.

<sup>4</sup> See *supra* note 3.

<sup>5</sup> See *supra* note 1.

is in compliance with the requirements set forth in the pre-fail credit provision of Rule 204(e), 1,719,772 times per year (3,893 registered broker-dealers certifying once per day on 1.76 securities, multiplied by 251 trading days in 2017). The total approximate estimated annual burden hour per year will be approximately 275,164 burden hours (1,719,772 multiplied by 0.16 hours/certification).

**V. Pre-Fail Credit Demonstration Requirement:** As of December 31, 2017, there were 3,893 registered broker-dealers. If a broker-dealer purchased or borrowed securities in accordance with the conditions specified in Rule 204(e) and determined that it had a net long position or net flat position on the settlement day for which the broker-dealer is claiming pre-fail credit, we estimate that a broker-dealer could have to make such determination with respect to approximately 1.76 securities per day.<sup>6</sup> We estimate that registered broker-dealers could have to demonstrate on its books and records that it has a net long position or net flat position on the settlement day for which the broker-dealer is claiming pre-fail credit, 1,719,772 times per year (3,893 registered broker-dealers checking for compliance once per day on 1.76 equity securities, multiplied by 251 trading days in 2017). The total approximate estimated annual burden hours per year will be 275,164 burden hours (1,719,772 multiplied by 0.16 hours/demonstration).

The total aggregate annual burden for the collection of information undertaken pursuant to all five provisions is thus 1,276,087 hours per year (275,164 + 174,937 + 275,658 + 275,164 + 275,164).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

<sup>6</sup> See *supra* note 1.

under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: September 7, 2018.

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84057; File No. SR-FICC-2018-005]

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

September 7, 2018.

On July 13, 2018, Fixed Income Clearing Corporation (“FICC”) filed with the U.S. Securities and Exchange Commission (“Commission”) proposed rule change SR-FICC-2018-005 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change was published for comment in the **Federal Register** on July 26, 2018.<sup>3</sup> The Commission did not receive any comment letters on the proposed rule change. 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 FICC’s Mortgage-Backed Securities Division (“MSBD”) electronic pool notification (“EPN”) service (“EPN Service”) rules (“EPN Rules”).<sup>4</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No.83682 (July 20, 2018), 83 FR 35513 (July 26, 2018) (SR-FICC-2018-005) (“Notice”).

<sup>4</sup> MSBD maintains two sets of rulebooks: The EPN Rules and the MSBD rules (“MSBD Rules”). Notice, 83 FR at 35513. The EPN Rules govern MSBD’s EPN Service, while the MSBD Rules govern MSBD’s clearance and settlement service. *Id.* The EPN Rules are available at [http://www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc\\_mbsd\\_epnrules.pdf](http://www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc_mbsd_epnrules.pdf). The MSBD Rules are available at [http://www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc\\_mbsd\\_rules.pdf](http://www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf).

#### A. Background

FICC states that the EPN Service provides an automated manner for market participants with an obligation to deliver pools of mortgages to transmit mortgage pool information efficiently and reliably to their counterparties in real time.<sup>5</sup> Market participants that wish to use the EPN Service (*i.e.*, become “EPN Users”) are required to submit an application to MBSDB.<sup>6</sup> The application process and the use of the EPN Service are governed by the EPN Rules.<sup>7</sup> MBSDB’s clearing members (“Clearing Members”) are required to be EPN Users; however, one can be an EPN User and not a Clearing Member.<sup>8</sup>

#### B. Proposed Amendments to the EPN Rules To Include an EPN User’s Ongoing Reporting Obligations

FICC proposes to amend the EPN Rules by adding a “General Continuance Standards” section. The proposed section would describe two existing MBSDB practices with respect to reporting obligations of EPN Users.<sup>9</sup> First, the proposed 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 EPN Rules’ requirements for admission to membership.<sup>10</sup> This notification must occur within two business days from the date on which the EPN User first learns of its non-compliance.<sup>11</sup> Second, the proposed section would state that an EPN User shall notify FICC of certain investigations or proceedings. Specifically, an EPN User must notify FICC within two business days after learning (i) that the EPN User is or will become the subject of an investigation or a proceeding, and (ii) that said investigation or proceeding would cause the EPN User to fall out of compliance with any of the requirements for membership set forth in the EPN Rules.<sup>12</sup> However, the EPN User would not be required to provide such a notification to FICC if doing so would cause the EPN User to violate an applicable law, rule, or regulation.<sup>13</sup>

<sup>5</sup> Notice, 83 FR at 33513. *See also* “EPN Overview,” available at <http://www.dtcc.com/clearing-services/ficc-mbsd/epn>.

<sup>6</sup> Notice, 83 FR at 33513.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Notice, 83 FR at 35514.

<sup>10</sup> These membership standards are set forth in EPN Rules, Article III, Rule 1, Sections 2-3, *supra* note 4.

<sup>11</sup> Notice, 83 FR at 35514.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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

The proposed “General Continuance Standards” section would identify when FICC may review an EPN User’s access to the EPN Service. The proposed “General Continuance Standards” section also would identify when FICC may seek written assurances from EPN Users.

First, the proposal would identify five circumstances when FICC would assess if an EPN User should retain access to the EPN Service: (i) If an EPN User experiences a Reportable Event;<sup>14</sup> (ii) if an EPN User fails to maintain the requirements for admission to membership;<sup>15</sup> (iii) if an EPN User violates any EPN Rule or other agreement with FICC; (iv) if an EPN User fails to satisfy any obligation to FICC in a timely manner; or (v) if 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.<sup>16</sup>

Second, the proposed “General Continuance Standards” section would state that FICC may require an EPN User to provide written assurances to FICC.<sup>17</sup> The proposal would authorize FICC to require written assurances from an EPN User if FICC has reason to believe that an EPN User may fail to comply with any of the EPN Rules.<sup>18</sup> Specifically, FICC could require an EPN User to

<sup>14</sup> As part of the proposal, FICC would include “Reportable Event” as a new defined term in the “Definitions and General Provisions” section of the EPN Rules. “Reportable Event” would be defined 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: (a) 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 (b) status as a defendant in litigation, which could reasonably impact the EPN User’s financial condition or ability to conduct business.” *Id.* Distinct from any other notification obligations, an EPN User would be required to submit to FICC written notice of any Reportable Event at least 90 calendar days prior to the effective date of such Reportable Event unless the EPN User demonstrates that (i) the EPN User could not have reasonably done so, and (ii) the EPN User provided written notice and oral notice to FICC as soon as possible. *Id.*

<sup>15</sup> Such requirements may include, but are not limited to, operational testing and related reporting requirements that FICC may impose from time to time. Notice, 83 FR at 35514.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*