Intermarket Competition

Nasdaq believes that the proposed rule change will not impose a burden on competition among the TRFs because use of the FINRA/Nasdaq TRF is completely voluntary and subject to competition. Nasdaq, as the Business Member, believes that the proposed rule change will strengthen the competitive position of the FINRA/Nasdaq TRF with respect to competing TRFs and will support increased competition in the market. Moreover, Nasdaq, as the Business Member, believes that the proposed rule change is necessary for the FINRA/Nasdaq TRF to retain trade reporting business and to compete for new business since customers evaluate product and pricing when they evaluate where to submit their trade reports. Nasdaq notes that the competing TRF does not charge a separate fee to report late trades or to correct previously submitted trade reports, and Nasdaq believes that the proposed rule change will reduce any price differential between the competing TRFs in this regard. Accordingly, Nasdaq believes that the risk that this proposed rule change will impose an undue burden on intermarket competition is extremely limited.

If market participants determine that the changes proposed herein are inadequate or unattractive, it is likely that the FINRA/Nasdaq TRF will lose market share as a result. Accordingly, Nasdaq believes that the proposed rule change will not impair the ability of the other TRF to maintain its competitive standing.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(2) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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–FINRA–2021–012 on the subject line.

Paper Comments
- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to File Number SR–FINRA–2021–012. 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 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 such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not read 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–FINRA–2021–012 and should be submitted on or before June 24, 2021.

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

J. Matthew DeLosDernier,
Assistant Secretary.

[PR Doc. 2021–11608 Filed 6–2–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34289; File No. 812–15170]

Franklin Templeton Co-Investing Interval Fund, et al.

May 27, 2021.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (“the Act”) and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end management investment companies and business development companies (“BDCs”) to co-invest in portfolio companies with each other and with certain affiliated investment funds.


FILING DATES: Applicants filed the application on October 8, 2020, and amended it on April 14, 2021.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission’s Secretary at Secretaries-Office@sec.gov and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on June 21, 2021, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers,
a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary at Secretaries-Office@sec.gov.

**ADDRESSES:** The Commission: Secretaries-Office@sec.gov. Applicants: c/o Mike Mundt, by email to mmundt@stradley.com.

**FOR FURTHER INFORMATION CONTACT:** Jill Ehrlich, Senior Counsel, at (202) 551–6819 or Lisa Reid Ragen, Branch Chief at (202) 551–6825 (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained from the Commission’s website by searching for the file number, or for an applicant using the Company name box, at http://www.sec.gov/search/search.htm by calling (202) 551–8090.

**Introduction**

1. The applicants request an order of the Commission under sections 17(d) and 57(i) and rule 17d–1 thereunder (the “Order”) to permit, subject to the terms and conditions set forth in the application (the “Conditions”), a Regulated Fund 1 and one or more other Regulated Funds and/or one or more Affiliated Funds 2 to enter into Co-Investment Transactions with each other. “Co-Investment Transaction” means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub (as defined below)) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. “Potential Co-Investment Transaction” means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order. 3

**Applicants**

2. The Existing Regulated Fund is a Delaware statutory trust that will be registered under the Act as a non-diversified closed-end management investment company and intends to operate as an interval fund under rule 23c–3 of the Act. Investment decisions for the Existing Regulated Fund will be made by the Board in accordance with the policies approved by the Board, 4 including members who are not “interested persons” within the meaning of section 2(a)(19) (the “Independent Directors”). 5

3. Each of the Existing Affiliated Funds is a Delaware limited partnership. Each of the Existing Affiliated Funds would be an investment company but for section 3(c)(1) of the Act, except for Franklin Talos, LP., which would be an investment company but for section 3(c)(7) of the Act. 2

4. The Existing Adviser is a California corporation that is registered with the Commission as an investment adviser under the Advisers Act. The Existing Adviser serves as the investment adviser to each Existing Affiliated Fund and will serve as the primary investment adviser to the Existing Regulated Fund pursuant to an investment advisory agreement. 6

5. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs. 6 Such a subsidiary may be of real properties, and (iii) that intends to participate in the Co-Investment Program.

6. All existing entities that currently intend to rely on the Order have been named as applicants and any existing or future entities that may rely on the Order in the future will comply with its terms and Conditions set forth in the application. *“Board” means the board of directors (or the equivalent) of the applicable Regulated Fund. 3*

7. No Independent Director will have any direct or indirect financial interest in any Co-Investment Transaction or in any investment company (a) that intends to operate as an interval fund under rule 23c–3 of the Act, (b) relies on rule 3a–7 under the Act, or (c) qualifies as a REIT within the meaning of section 856 of the Code because substantially all of its assets would consist of real properties. The term “SBIC Subsidiary” means a Wholly-Owned Investment Sub that is licensed by the Small Business Administration (the “SBA”) to operate under the Small Business Investment Act of 1958, as amended (the “SBA Act”) as a small business investment company.
designed to ensure that, when such opportunities arise, the Advisers to the relevant Regulated Funds are promptly notified and receive the same information about the opportunity as any other Advisers considering the opportunity for their clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies and any Board-Established Criteria of a Regulated Fund, the policies and procedures will require that the Adviser to such Regulated Fund receive sufficient information to allow such Adviser’s investment committee to make its independent determination and recommendations under the Conditions. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund’s then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund’s participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

8. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the Adviser’s investment committee will approve an investment amount. Prior to the External Submission (as defined below), each proposed order amount may be reviewed and adjusted, in accordance with the applicable Advisers’ written allocation policies and procedures, by the applicable Adviser’s investment committee. The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its “Internal Order.” The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.

9. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the “External Submission”), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders. If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds’ or the Affiliated Funds’ consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.

B. Follow-On Investments

10. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested and continue to hold an investment.

11. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment. If the Regulated Funds and Affiliated Funds had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

12. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under
Condition 8(b) if it is (i) a Pro Rata Follow-On Investment or (ii) a Non-Negotiated Follow-On Investment. Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board’s periodic review in accordance with Condition 10.

C. Dispositions

13. Applicants propose that Dispositions would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.

14. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition or (ii) the securities are Tradable Securities and the Disposition meets the other requirements of Condition 6(c)(i). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board’s periodic review in accordance with Condition 10.

D. Delayed Settlement

15. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the earliest settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa. Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

16. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the “Holders”) own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the “Shares”), then the Holders will vote such Shares as required under Condition 15; provided however, that Condition 15 will not apply to a Regulated Fund during any period in which the Holders in the aggregate own 100% of the Shares of such Regulated Fund.

Applicants’ Legal Analysis

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit participation by a registered investment company and an affiliated person in any “joint enterprise or other joint arrangement or profit-sharing plan,” as defined in the rule, without prior approval by the Commission. Section 17(d) of the Act and Rule 17d-1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(b) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission’s rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d-1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of rule 17d-1 and section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in
such transactions fall within the
category of persons described by rule
17d–1 and/or section 57(b), as modified
by rule 57b–1 thereunder, as applicable,
vis-à-vis each participating Regulated
Fund. Each of the participating
Regulated Funds and Affiliated Funds
may be deemed to be affiliated persons
vis-à-vis a Regulated Fund within the
meaning of section 2(a)(3) by reason of
common control because (i) an Adviser,
that is either the Existing Adviser or an
entity that controls, is controlled by, or
under common control with the Existing
Adviser, will be the investment adviser
(and sub-adviser, if any) to each of the
Regulated Funds and the Affiliated
Funds, and (ii) the Adviser manages
each of the Regulated Funds pursuant to
its investment advisory or sub-advisory
agreement. Thus, each of the Affiliated
Funds could be deemed to be a person
related to the Regulated Funds in a
manner described by section 57(b) and
related to Future Regulated Funds in a
manner described by rule 17d–1; and
therefore the prohibitions of rule 17d–
1 and section 57(a)(4) would apply
respectively to prohibit the Affiliated
Funds from participating in Co-
Investment Transactions with the
Regulated Funds.

4. In passing upon applications under
rule 17d–1, the Commission considers
whether the company’s participation in
the joint transaction is consistent with
the provisions, policies, and purposes of
the Act and the extent to which such
participation is on a basis different from
or less advantageous than that of other
participants.

5. Applicants state that in the absence
of the requested relief, in many
circumstances the Regulated Funds
would be limited in their ability to
participate in attractive and appropriate
investment opportunities. Applicants
state that, as required by rule 17d–1(b),
the Conditions ensure that the terms on
which Co-Investment Transactions may
be made will be consistent with the
participation of the Regulated Funds
being on a basis that it is neither
different from nor less advantageous than
other participants, thus protecting the
equity holders of any participant from
being disadvantaged. Applicants
further state that the Conditions ensure
that all Co-Investment Transactions are
reasonable and fair to the Regulated
Funds and their shareholders and do
not involve overreaching by any person
concerned, including the Advisers.

Applicants state that the Regulated
Funds’ participation in the Co-
Investment Transactions in accordance
with the Conditions will be consistent
with the provisions, policies, and
purposes of the Act and would be done
in a manner that is not different from,
or less advantageous than, that of other
participants.

Applicants’ Conditions

Applicants agree that the Order will
be subject to the following Conditions:

1. Identification and Referral of
Potential Co-Investment Transactions.
(a) The Advisers will establish,
maintain and implement policies and
procedures designed to ensure that
each Adviser is promptly notified of all
Potential Co-Investment Transactions that fall within the then-
current Objectives and Strategies and
Board-Established Criteria of any
Regulated Fund the Adviser manages.
(b) When an Adviser to a Regulated
Fund is notified of a Potential Co-
Investment Transaction under
Condition 1(a), the Adviser will make
an independent determination of the
appropriateness of the investment for
the Regulated Fund in light of the
Regulated Fund’s then-current
circumstances.

2. Board Approvals of Co-Investment
Transactions.
(a) If an Adviser deems a Regulated
Fund’s participation in any Potential
Co-Investment Transaction to be
appropriate for the Regulated Fund, it
will then determine an appropriate level
of investment for the Regulated Fund.
(b) If the aggregate amount
recommended by the Advisers to be
invested in the Potential Co-Investment
Transaction by the participating
Regulated Funds and any participating
Affiliated Funds, collectively, exceeds
the amount of the investment
opportunity, the investment opportunity
will be allocated among them pro rata
based on the size of the Internal Orders,
as described in section III.A.1.b. of the
application. Each Adviser to a
participating Regulated Fund will
promptly notify and provide the Eligible
Directors with information concerning
the Affiliated Funds’ and Regulated
Funds’ order sizes to assist the Eligible
Directors with their review of the
applicable Regulated Fund’s
investments for compliance with these
Conditions.

(c) After making the determinations
required in Condition 1(b) above, each
Adviser to a participating Regulated
Fund will distribute written information
concerning the Potential Co-Investment
Transaction (including the amount
proposed to be invested by each
participating Regulated Fund and each
participating Affiliated Fund) to the
Eligible Directors of its participating
Regulated Fund reasonably designed to
consideration. A Regulated Fund will
enter into a Co-Investment Transaction
with one or more other Regulated Funds
or Affiliated Funds only if, prior to the
Regulated Fund’s participation in the
Potential Co-Investment Transaction, a
Required Majority concludes that:

(i) The terms of the transaction,
including the consideration to be paid,
are reasonable and fair to the Regulated
Fund and its equity holders and do not
involve overreaching in respect of the
Regulated Fund or its equity holders on
the part of any person concerned;
(ii) the transaction is consistent with:
(A) The interests of the Regulated
Fund’s equity holders; and
(B) The Regulated Fund’s then-current
Objectives and Strategies;
(iii) the investment by any other
Regulated Fund(s) or Affiliated Fund(s)
would not disadvantage the Regulated
Fund, and participation by the
Regulated Fund would not be on a basis
different from, or less advantageous than,
that of any other Regulated
Fund(s) or Affiliated Fund(s) participating in the
transaction;
provided that the Required Majority shall not be prohibited from reaching the
conclusions required by this
Condition 2(c)(ii) if:

A) The settlement date for another
Regulated Fund or an Affiliated Fund in
a Co-Investment Transaction is later
than the settlement date for the
Regulated Fund by no more than ten
business days or earlier than the
settlement date for the Regulated Fund
by no more than ten business days, in
either case, so long as: (x) The date on
which the commitment of the Affiliated
Funds and Regulated Funds is made is
the same; and (y) the earliest settlement
date and the latest settlement date of
any Affiliated Fund or Regulated Fund
participating in the transaction will
occur within ten business days of each
other; or

B) any other Regulated Fund or
Affiliated Fund, but not the Regulated
Fund itself, gains the right to nominate
a director for election to a portfolio
company’s board of directors, the right
to have a board observer or any similar
right to participate in the governance or
management of the portfolio company
so long as: (x) The Eligible Directors will
have the right to ratify the selection of
such director or board observer, if any;
(y) the Adviser agrees to, and does,
provide periodic reports to the
Regulated Fund’s Board with respect to
the actions of such director or the
information received by such board
observer or obtained through the
exercise of any similar right to
participate in the governance or
management of the portfolio company;
and (z) any fees or other compensation
that any other Regulated Fund or
Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party’s investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

5. Same Terms and Conditions. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company’s board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition if Condition 2(c)(iii)(B) is met.

6. Standard Review Dispositions. (a) General. If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) Same Terms and Conditions. Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c) No Board Approval Required. A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i) The Adviser to each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition; 24 (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) Standard Board Approval. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund’s participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund’s best interests.

7. Enhanced Review Dispositions. (a) General. If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) Enhanced Board Approval. The Adviser will provide its written recommendation as to the Regulated Fund’s participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

23 For example, procuring the Regulated Fund’s investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

24 In the case of any Disposition, proportionality will be measured by each participating Regulated Fund’s and Affiliated Fund’s outstanding investment in the security in question immediately preceding the Disposition.
(i) The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv); and
(ii) the making and holding of the Pre-Boarding Investments were not prohibited by section 57 or rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.
(c) Additional Requirements: The Disposition may only be completed in reliance on the Order if:
(i) Same Terms and Conditions. Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and Conditions as those applicable to the Affiliated Funds and any other Regulated Fund;
(ii) Original Investments. All of the Affiliated Funds’ and Regulated Funds’ investments in the issuer are Pre-Boarding Investments;
(iii) Advice of counsel. Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;
(iv) Multiple Classes of Securities. All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund’s or Affiliated Fund’s holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial 25 in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and
(v) No control. The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).
(a) General. If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:
(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and
(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.
(b) No Board Approval Required. A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:
(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds’ and the Affiliated Funds’ outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and
(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.
(c) Standard Board Approval. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund’s participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.
(d) Allocation. If, with respect to any such Follow-On Investment:
(i) the amount of the opportunity proposed to be made available to any Regulated Fund is based on the Regulated Funds’ and the Affiliated Funds’ outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and
(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.
(e) Other Conditions. The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

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25 In determining whether a holding is “immaterial” for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

26 To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund’s and Affiliated Fund’s outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund’s and Affiliated Fund’s outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.
including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) Enhanced Board Approval. The Adviser will provide its written recommendation as to the Regulated Fund’s participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a standalone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable. The basis for the Board’s findings will be recorded in its minutes.

(c) Additional Requirements. The Follow-On Investment may only be completed in reliance on the Order if:

(i) Original Investments. All of the Affiliated Funds’ and Regulated Funds’ investments in the issuer are Pre-Boarding Investments;

(ii) Advice of counsel. Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iii) Multiple Classes of Securities. All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund’s or Affiliated Fund’s holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) No control. The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

(d) Allocation. If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds’ and the Affiliated Funds’ outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) Other Conditions. The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. Board Reporting, Compliance and Annual Re-Approval

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund’s then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund’s Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund’s chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund’s compliance with the terms and Conditions of the application and the procedures established to achieve such compliance.

(d) The Independent Directors will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund’s best interests.

11. Record Keeping. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under section 57(f).

12. Director Independence. No Independent Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an “affiliated person” (as defined in the Act) of any Affiliated Fund.

13. Expenses. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. Transaction Fees. Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or 27 Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.
underwriting compensation permitted by section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, or the Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(ii)(B)(z), (ii) brokerage or underwriting compensation permitted by section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. Independence. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares in the same percentages as the Regulated Fund’s other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board’s composition, size or manner of election; provided however, that this Condition 15 will not apply to a Regulated Fund during any time which the Holders in the aggregate own 100% of the Shares of such Regulated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLashker,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Advance Notice To Add the Sponsored GC Service and Make Other Changes

May 27, 2021.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”) 1 and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (“Act”), notice is hereby given that on May 12, 2021, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the advance notice 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 advance notice from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Advance Notice

This advance notice consists of modifications to the FICC Government Securities Division (“GSD”) Rulebook (“Rules”) in order to (i) add a new service offering, which would allow a Sponsoring Member to submit for clearing Repo Transactions with its Sponsored Members on securities that are represented by Generic CUSIP Numbers and held under a triparty custodial arrangement (the “Sponsored GC Service”), (ii) add language to Rule 3A to allow FICC to recognize, for Capped Contingency Liquidity Facility (“CCLF”) calculation purposes, any offsetting settlement obligations as between a Sponsoring Member’s netting account and its Sponsoring Member Omnibus Account to ensure that a Sponsoring Member’s CCLF obligation is calculated in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades, (iii) remove the requirement from Section 2 of Rule 3A that a Sponsoring Member provide a quarterly representation to FICC that each of its Sponsored Members is a “qualified institutional buyer” as defined in Rule 144A of the Securities Act of 1933, as amended (“Rule 144A”), or is a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(ii) of Rule 144A, satisfies the financial requirements necessary to be a “qualified institutional buyer” as specified in that paragraph, and (iv) make a clarification, certain corrections, and certain technical changes, as described in greater detail below.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. 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 and B below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement on Comments on the Advance Notice Received From Members, Participants, or Others

FICC reviewed the proposed rule change with Sponsoring Members and Sponsored Members in order to benefit from their expertise. Written comments relating to this proposed rule change have not been received from the Sponsored Members, Sponsoring Members or any other person. FICC will notify the Commission of any written comments received by FICC.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

Nature of the Proposed Change

The purpose of the proposed rule change is to amend the Rules to (i) add a new service offering, the Sponsored GC Service, (ii) add language to Rule 3A to allow FICC to recognize, for CCLF calculation purposes, any offsetting settlement obligations as between a Sponsoring Member’s netting account and its Sponsoring Member Omnibus Account to ensure that a Sponsoring Member’s CCLF obligation is calculated in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades, (iii) remove the requirement