

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88910; File No. SR–FICC–2020–002]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change To Amend the Government Securities Division Rulebook Relating to the Legal Entity Identifier Requirement

May 20, 2020.

I. Introduction

On March 25, 2020, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder, ² proposed rule change SR–FICC–2020–002. The proposed rule change was published for comment in the **Federal Register** on April 9, 2020. ³ The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

FICC proposes to modify its Government Securities Division (“GSD”) ⁴ Rulebook (“Rules”) ⁵ to require: (1) Netting and CCIT Member applicants to obtain and provide a Legal Entity Identifier (“LEI”) ⁶ to FICC as part of its membership application and Netting and CCIT Members to have a current LEI on file with FICC at all times; and (2) Sponsoring Member applicants to provide FICC with an LEI for each Sponsored Member applicant

as part of its Sponsoring Member application and Sponsoring Members to have a current LEI on file with FICC for each existing Sponsored Member and to provide an LEI for each newly added Sponsored Member it would like to sponsor into membership. Additionally, FICC proposes to require any Netting Member, CCIT Member, or Sponsoring Member who fails to maintain current LEIs on file to indemnify FICC for any losses and Legal Actions that arise due to that failure.

A. Background

The Office of Financial Research (“OFR”) of the U.S. Department of the Treasury has adopted a rule (“OFR Regulation”) establishing a data collection for centrally cleared transactions in the U.S. repurchase agreement (“repo”) market. ⁷ To facilitate this collection, OFR requires “covered reporters,” defined as certain central counterparties who clear repo transactions, to submit to OFR daily reports including trade and collateral information on all repo transactions cleared through any of its services. FICC meets the definition of a covered reporter because it acts as the central counterparty (“CCP”) ⁸ in repo transactions cleared through its services. FICC offers its repo transaction clearing services through its Netting System services and CCIT Services. To comply with this requirement, FICC must submit, as part of its daily reports, the LEI of each clearing member involved in each reported repo transaction. ⁹

OFR states in the Release that the reporting requirement will enhance the ability of the Financial Stability Oversight Council (“Council”), ¹⁰ Council member agencies, ¹¹ and OFR to

identify and monitor risks to financial stability because the repo market serves a crucial role in providing short-term funding, among other critical functions, for U.S. markets. ¹² Specifically, the Release explains that the LEI requirement will facilitate an understanding of repo market participants’ exposures, concentrations, and network structures. ¹³

B. Proposed Rule Changes

Currently, FICC does not require that its Members obtain LEIs or provide LEIs to FICC either as part of application materials or as a Member. ¹⁴ FICC proposes to add a new defined term to its Rules for a Legal Entity Identifier. FICC uses the terminology of the Global Legal Entity Identifier in defining LEI in its GSD Rules. ¹⁵ Moreover, to comply with the OFR Regulation, FICC proposes to modify the GSD Rules to require certain Member applicants and Members to obtain, provide, and maintain current LEIs on file with FICC in the two following areas.

(1) Netting and CCIT Member Applicants and Members

FICC proposes to amend the GSD Rules to include the following two requirements for its Netting Members and CCIT Members and for applicants to become such Members. First, FICC proposes to amend its GSD Rules to require each Netting Member applicant and each CCIT Member applicant to obtain and provide an LEI to FICC as part of its membership application. This change will be implemented upon Commission approval.

Second, FICC proposes to amend its GSD Rules to add language that would require each Netting Member and each CCIT Member to have a current LEI on file with FICC at all times. Existing Netting Members and CCIT Members will have 60 calendar days from the date of the Commission’s approval to submit their LEIs to FICC.

Additionally, FICC proposes to provide that a Netting Member or CCIT

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Securities Exchange Act Release No. 88557 (April 3, 2020), 85 FR 19979 (April 9, 2020) (SR–FICC–2020–002) (“Notice”).

⁴ FICC operates two divisions, GSD and the Mortgage Backed Securities Division (“MBSD”). GSD provides trade comparison, netting, risk management, settlement, and central counterparty services for the U.S. Government securities market. MBSD provides the same services for the U.S. mortgage-backed securities market. GSD and MBSD maintain separate sets of rules, margin models, and clearing funds. The proposed rule change relates solely to GSD.

⁵ Capitalized terms not defined herein are defined in the Rules, available at <http://www.dtcc.com/legal/rules-and-procedures>.

⁶ A “Legal Entity Identifier” is a 20-character reference code used to uniquely identify legally distinct entities that engage in financial transactions. The Legal Entity Identifier is based on the ISO 17442 standard developed by the International Organization for Standardization and satisfies the standards implemented by the Global Legal Entity Identifier Foundation. See <https://www.gleif.org/en/about-lei/introducing-the-legal-entity-identifier-lei>.

⁷ 84 FR 4975 (February 20, 2019) (hereinafter the “Release”). The OFR Regulation is codified at 12 CFR part 1610.

⁸ As a CCP, FICC interposes itself between counterparties to a repo transaction, acting functionally as the buyer to every seller and the seller to every buyer to ensure the performance of each contract. 17 CFR 240.17Ad–22(a)(2).

⁹ In the Release, OFR recognizes that certain rule changes may be necessary for a covered reporter like FICC to comply with this requirement and notes that it expects such covered reporters to effectuate rulemaking, subject to any necessary regulatory approval, to require that its participants obtain and provide LEIs to meet a covered reporter’s OFR reporting requirements. Release, *supra* note 7, at 4980–81.

¹⁰ The Council was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Council is charged with identifying risks to the financial stability of the United States, among other things. See <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc>.

¹¹ The Council member agencies are the Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, Federal Housing

Finance Agency, National Credit Union Administration, Office of the Comptroller of the Currency, Securities and Exchange Commission, Treasury Department, and Consumer Financial Protection Bureau. See <https://www.treasury.gov/initiatives/fsoc/about/Pages/FSOC-Member-Agencies.aspx>.

¹² See Release, *supra* note 7, at 4975.

¹³ See *id.* at 4980.

¹⁴ See Notice, *supra* note 3, at 19980.

¹⁵ See *supra* note 6. The Global Legal Entity Identifier Foundation was established by the Financial Stability Board in June 2014 to support the implementation and use of Legal Entity Identifiers. The Financial Stability Board is an international body that monitors and makes recommendations about the global financial system. www.fsb.org.

Member must indemnify FICC, among others (collectively, the “LEI Indemnified Parties”), for any and all losses, liabilities, expenses, and Legal Actions¹⁶ suffered or incurred by the LEI Indemnified Parties arising from a Netting Member’s or CCIT Member’s failure to have its current LEI on file with FICC. FICC states that the proposed indemnity clause is appropriate because, in fulfilling its regulatory obligations under the OFR Regulation, FICC would be relying upon Netting Members and CCIT Members to keep their LEI on file with FICC current.¹⁷

(2) Sponsoring Members Applicants and Members

FICC proposes to amend the GSD Rules to include the following three requirements for its Sponsoring Member applicants and Sponsoring Members. First, each Netting Member or CCIT Member who submits an application to FICC in order to become a Sponsoring Member must submit the LEIs of its Sponsored Member applicants as part of the Sponsoring Member application. This change will be implemented upon Commission approval.

Second, each Sponsoring Member must provide the LEI for each of its existing Sponsored Members so that FICC has a current LEI for each such Sponsored Member at all times. For existing Sponsored Members, Sponsoring Members will have 60 calendar days from the date of the Commission’s approval to submit the LEIs to FICC. Third, each Sponsoring Member must provide the LEI for any new Sponsored Member it wishes to sponsor into membership as a Sponsored Member. This change will be implemented upon Commission approval.

Additionally, FICC proposes to include an indemnity clause, as described above, for Sponsoring Members because, like Netting Members and CCIT Members, FICC would be relying on the Sponsoring Members to keep Sponsored Member LEIs on file with FICC current.¹⁸

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act¹⁹ directs the Commission to approve a

proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,²⁰ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that clearing agency rules be designed to protect investors and the public interest.²¹ As stated in Section II.A above, the OFR Regulation will enhance the ability of the Council to identify and monitor risks to financial stability because the repo market serves a crucial role in providing short-term funding, among other critical functions, for U.S. markets. Specifically, the LEI requirement will facilitate an understanding of repo market participants’ exposures, concentrations, and network structures. Therefore, the Commission believes the proposed rule change could serve to protect investors and the public interest.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, with the requirements of Section 17A of the Act²² and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act²³ that proposed rule change SR-FICC-2020-002, be, and hereby is, APPROVED.²⁴

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88918; File No. 4-762]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and MEMX LLC

May 20, 2020.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 17d-2 thereunder,² notice is hereby given that on April 16, 2020, the Financial Industry Regulatory Authority, Inc. (“FINRA”) and MEMX LLC (“MEMX”) (together with FINRA, the “Parties”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a plan for the allocation of regulatory responsibilities, dated April 16, 2020 (“17d-2 Plan” or the “Plan”). The Commission is publishing this notice to solicit comments on the 17d-2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.⁴ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁵ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁶ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or

¹⁶ The proposed rule change would define “Legal Action,” to mean and include any claim, counterclaim, demand, action, suit, countersuit, arbitration, inquiry, proceeding or investigation before any federal, state or foreign court or other tribunal, or any investigative or regulatory agency or self-regulatory organization. Notice, *supra* note 3, at 19980.

¹⁷ See *id.*

¹⁸ See *id.* at 19981.

¹⁹ 15 U.S.C. 78s(b)(2)(C).

²⁰ 15 U.S.C. 78q-1(b)(3)(F).

²¹ *Id.*

²² 15 U.S.C. 78q-1.

²³ 15 U.S.C. 78s(b)(2).

²⁴ In approving the proposed rule change, the Commission considered the proposals’ impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

⁵ 15 U.S.C. 78q(d)(1).

⁶ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).