

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90931; File No. SR-FICC-2020-803)

January 14, 2021

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of No Objection to Advance Notice to Include Same-Day Settling Trades in the Risk Management, Novation, Guarantee, and Settlement Services of the Government Securities Division's Delivery-Versus-Payment Service, and Make Other Changes

On November 19, 2020, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) advance notice SR-FICC-2020-803 (“Advance Notice”) pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (“Clearing Supervision Act”),¹ and Rule 19b-4(n)(1)(i)² under the Securities Exchange Act of 1934 (“Exchange Act”).³ In the Advance Notice, FICC proposes to (1) expand its provision of central counterparty services to include the start leg of certain repurchase agreement (“repo”) transactions, and (2) enable participating FICC members to pair-off and settle certain offsetting obligations, as described more fully below. The Advance Notice was published for public comment in the Federal Register on December 29, 2020,⁴ and the Commission has

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ 15 U.S.C. 78a et seq.

⁴ Securities Exchange Act Release No. 90736 (December 21, 2020), 85 Fed. Reg. 85743 (December 29, 2020) (File No. SR-FICC-2020-803) (“Notice of Filing”).

received no comments regarding the changes proposed in the Advance Notice.⁵ This publication serves as notice of no objection to the Advance Notice.

I. THE ADVANCE NOTICE

A. Background

FICC, through its Government Securities Division (“GSD”), serves as a central counterparty (“CCP”) and provider of clearance and settlement services for cash-settled U.S. Treasury securities.⁶ Among its services, FICC provides real-time trade matching, clearing, risk management, and netting for repo transactions in U.S. Treasury securities in which all securities delivery obligations are made against full payment (“delivery-versus-payment” or “DVP”) (the “DVP Service”).⁷

⁵ On November 19, 2020, FICC also filed a related proposed rule change (SR-FICC-2020-015) (“Proposed Rule Change”) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder. See 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4 respectively. The Proposed Rule Change was published in the Federal Register on December 8, 2020. Securities Exchange Act Release No. 90551 (December 2, 2020), 85 Fed. Reg. 79051 (December 8, 2020). In the Proposed Rule Change, FICC seeks approval of proposed changes to its rules necessary to implement the Advance Notice. The comment period for the related Proposed Rule Change filing closed on December 29, 2020, and the Commission received no comments. As the proposals contained in the Advance Notice were also filed as a proposed rule change, all public comments received on the proposal are considered, regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice.

⁶ FICC is composed of two divisions: GSD and the Mortgage-Backed Securities Division (“MBSD”). GSD provides real-time trade matching, clearing, risk management, and netting for trades in U.S. government debt issues. MBSD provides real-time automated trade matching, trade confirmation, risk management, netting, and electronic pool notification to the mortgage-backed securities (“MBS”) market. The Advance Notice deals solely with proposed changes to the GSD Rulebook (“Rules”), which are available at <http://www.dtcc.com/legal/rules-and-procedures>.

⁷ In addition to the DVP Service, FICC also provides such services to facilitate trading other types of repos. FICC’s General Collateral Finance (“GCF”) Repo®

DVP repos involve a pair of transactions between two parties. The first transaction (the “Start Leg”) consists of the sale of securities, in which one party delivers securities in exchange for the other party’s delivery of cash. The second transaction (the “End Leg”) occurs on a date after that of the Start Leg and consists of the repurchase of securities, in which the obligations to deliver cash and securities are the reverse of the Start Leg. The parties agree to the terms of the trade, including the specific securities, principal amount, interest rate, haircut, and date of maturity (i.e., either overnight or term).

A DVP repo that is scheduled to start one or more business days after the submission of trade details to FICC is a “forward starting” repo. A DVP repo that is scheduled to start on the same business day as trade details are submitted to FICC is a “same-day starting” repo. For forward starting repos, FICC acts as CCP for both the Start Leg and the End Leg. However, since the inception of the DVP Service, for same-day starting repos, FICC generally has acted as CCP for the End Leg only.⁸ Although

Service enables members to trade general collateral finance repos based on rate, term, and underlying product throughout the day on a blind basis. See Rule 20 – Special Provisions for GCF Repo Transactions, supra note 6. FICC’s Centrally Cleared Institutional Triparty (“CCIT”) Service enables trading of tri-party repos between members that participate in the GCF Repo Service and members that are institutional cash lenders (other than investment companies registered under the Investment Company Act of 1940, as amended). See Rule 3B – CCIT Service, supra note 6. Unlike the DVP Service, the GCF Repo and CCIT Services settle via the triparty platform of a clearing bank. This Advance Notice proposes changes specific to the DVP Service.

⁸ There is one limited scenario in which FICC currently acts as CCP for the Start Leg of a brokered same-day starting repo. Specifically, if the Start Leg fails to settle on its original scheduled settlement date, FICC currently assumes responsibility for settlement of the Start Leg on the evening of the original scheduled settlement date. See Notice of Filing, supra note 4 at 85744.

FICC does not currently novate the Start Leg of same-day starting repos, FICC collects margin from the parties for the End Leg on the scheduled settlement date of the Start Leg.⁹ Currently, the parties to a same-day starting repo settle the Start Leg bilaterally outside of FICC.

The first step in the clearance and settlement process of a DVP repo is for the parties to submit the trade details to FICC.¹⁰ Upon receipt, FICC validates the trade details in a procedure referred to in FICC's Rules as "Trade Comparison," which culminates in the legally binding and enforceable contract between FICC and the parties to the trade.¹¹ There are different types of Trade Comparisons, depending on which entity submits the trade details to FICC, and the procedures, timing, and other applicable operational arrangements vary depending on the type. For example, a Bilateral Comparison occurs when the individual FICC members that are the parties to a trade each submit trade details to FICC.¹² A Demand Comparison occurs when an Inter-Dealer

⁹ See Notice of Filing, supra note 4 at 85744, 50.

¹⁰ Trade details may be submitted to FICC by, or on behalf of, a member in a form, manner, and timeframe prescribed by FICC's Rules. See Rule 5 – Comparison System, supra note 6.

¹¹ Id.

¹² See Rule 6A – Bilateral Comparison, supra note 6.

Broker (“IDB”) or qualifying non-IDB repo broker¹³ (each, a “Repo Broker”) submits trade details to FICC on behalf of both parties to a trade.¹⁴

FICC generally novates and guarantees settlement of a trade upon Trade Comparison.¹⁵ Additionally, on a daily basis, FICC aggregates and matches a member’s offsetting obligations resulting from the member’s trades, thereby netting the member’s total daily settlement obligations.¹⁶ In the DVP Service, such netting takes place the night before the scheduled settlement date of whichever leg of the repo would settle on the following business day.¹⁷

Trades that settle bilaterally outside of FICC do not have the benefit of FICC’s CCP services, and therefore, such trades can be subject to greater risk of settlement fails.¹⁸ Moreover, trades facilitated by a Repo Broker that settle outside of FICC require

¹³ For purposes of the Advance Notice, both IDBs and non-IDB repo brokers are FICC members. A qualifying non-IDB repo broker is one that FICC has determined: (1) operates as a broker with regard to activity in a segregated repo account, and (2) agrees and participates in FICC’s repo netting service in the same manner as an IDB that participates in the service. See Rule 1 – Definitions, supra note 6.

¹⁴ See Rule 6B – Demand Comparison, supra note 6.

¹⁵ See Rule 5 – Comparison System, supra note 6.

¹⁶ See Rule 11 – Netting System, supra note 6.

¹⁷ See Notice of Filing, supra note 4 at 85745-46.

¹⁸ There are several risk factors inherent to trades that clear bilaterally as opposed to trades that clear through a CCP. For example, the credit risk associated with bilaterally cleared trades remains with the original counterparties, who might not utilize robust and transparent margin requirements, multilateral netting, emergency liquidity and loss sharing arrangements, or other risk mitigation measures. See U.S. Department of the Treasury Report, A Financial System That Creates Economic Opportunities: Capital Markets at 78, 81 (October 2017), available at <https://www.treasury.gov/press-center/press-releases/documents/a->

multiple bilateral securities movements between the parties to the trade and the Repo Broker. The greater the number of bilateral securities movements involved in trade settlement, the greater the potential for operational risk resulting in settlement fails. If the Start Leg of a DVP repo submitted by a Repo Broker fails to settle on the original scheduled settlement date, FICC currently steps in that evening as CCP and assumes responsibility for settling the trade.¹⁹ This process may involve FICC receiving securities from the failing party or netting the settlement obligations arising from the Start Leg against those of the End Leg of the same or another repo. FICC states that although its current process of centralizing the settlement of such failed Start Legs decreases further settlement risk, the current process is operationally inefficient because it does not eliminate the multiple securities movements that give rise to the risk of settlement fails.²⁰

B. Proposed Same-Day Settling Service

FICC states that its members have expressed an interest in FICC acting as CCP for the Start Leg of same-day starting repos.²¹ In the Advance Notice, FICC proposes to modify its Rules to include the Start Leg of same-day starting repos in the risk

financial-system-capital-markets-final-final.pdf; Joint Staff Report: The U.S. Treasury Market at 55 (October 15, 2014), available at https://www.treasury.gov/press-center/press-releases/Documents/Joint_Staff_Report_Treasury_10-15-2014.pdf; Treasury Market Practices Group, White Paper on Clearing and Settlement in the Secondary Market for U.S. Treasury Securities at 2-4 (July 11, 2019), available at https://www.newyorkfed.org/medialibrary/Microsites/tmpg/files/CS_FinalPaper_071119.pdf.

¹⁹ See Section 5, Rule 19 – Special Provisions for Brokered Repo Transactions, supra note 6.

²⁰ See Notice of Filing, supra note 4 at 85744.

²¹ Id.

management, novation, guarantee, and settlement services of the DVP Service (the “Same-Day Settling Service”). Upon Trade Comparison, FICC would act as CCP for the Start Leg of same-day starting repos, which would settle on the same business day. FICC’s margin collection with respect to the trade would not change from the current process. After FICC’s novation, if the Start Leg were to fail, the parties’ obligations to and from FICC would go through the netting process that evening, and FICC would continue to apply the margin amounts collected with respect to the trade towards FICC’s risk management of the End Leg.

FICC believes that the Same-Day Starting Service could increase settlement efficiencies and decrease settlement risk because it would eliminate the movement of securities between members by centralizing the settlement of the Start Leg of same-day starting repos with FICC.²² Moreover, for same-day starting repos submitted by Repo Brokers, the Same-Day Settling Service would remove the Repo Broker from the settlement process by eliminating the multiple bilateral securities movements involved in the settlement of the Start Leg.

1. Voluntary for Repo Brokers; Mandatory for Other Members

As proposed in the Advance Notice, participation in the proposed Same-Day Settling Service would be voluntary for Repo Brokers. Repo Brokers often provide a suite of services to their clients, including facilitating the bilateral settlement of the Start Leg of same-day starting repos. FICC states that a requirement on Repo Brokers to participate in the Same-Day Settling Service could disrupt the current service offerings

²² See Notice of Filing, supra note 4 at 85744, 49-50.

from Repo Brokers to their clients.²³ Since Repo Brokers submit trade details to FICC on behalf of both parties to a trade, a Repo Broker opting out of the Same-Day Settling Service would simply result in settlement of the Start Leg bilaterally outside of FICC, as is done currently. FICC believes that providing optionality would allow Repo Brokers and their clients to determine whether a Repo Broker should participate in the Same-Day Settling Service.²⁴ For participating Repo Brokers, FICC would no longer assume responsibility for a failed Start Leg because FICC would already be acting as CCP for the Start Leg upon Trade Comparison.

For FICC's members that are not Repo Brokers, participation in the Same-Day Settling Service would be mandatory. Unlike Repo Brokers, FICC's individual members submit trade details with respect to their own side of a trade only, such that Trade Comparison only occurs after FICC validates the trade details submitted by both parties to the trade.²⁵ Accordingly, if one party to a same-day starting repo could choose to opt out of the Same-Day Settling Service, FICC would not be able to act as CCP with equal and opposite settlement obligations between the two parties. Such trades would, therefore, need to settle outside of FICC as they do currently. However, unlike the clients of a Repo Broker, such members would not know in advance whether any given Start Leg would settle with FICC as CCP or bilaterally outside of FICC. By requiring such

²³ See Notice of Filing, supra note 4 at 85746.

²⁴ Id.

²⁵ See Rule 6A – Bilateral Comparison, supra note 6.

members to participate in the Same-Day Settling Service, members would have certainty that their Compared Trades would settle with FICC acting as CCP.

2. As-Of Trades

For purposes of the Advance Notice, same-day starting repos would include As-Of Trades,²⁶ in which a member submits a DVP repo for comparison on the business day after the scheduled settlement date for the Start Leg, and the End Leg is the current business day or thereafter. FICC states that members occasionally submit As-Of Trades due to human or operational errors.²⁷ FICC further states that it included As-Of Trades in the Advance Notice in order to reasonably include as many variations of same-day starting repos as possible to ensure that FICC would provide consistent settlement processing for all same-day starting repos.²⁸

Currently, the Start Leg of an As-Of Trade settles outside of FICC. An End Leg scheduled to settle on the current business day also settles outside of FICC. However, an End Leg scheduled to settle on a date after the current business day settles with FICC acting as CCP. As proposed in the Advance Notice, FICC would act as CCP with respect to both the Start and End Legs of a same-day starting repo, regardless of the timing of the respective scheduled settlement dates.

²⁶ See Rule 1, supra note 6.

²⁷ See Notice of Filing, supra note 4 at 85745.

²⁸ Id.

3. Settlement at Contract Value or System Value

As mentioned above, netting in the DVP Service occurs the night before the scheduled settlement date. Because settlement of Start Legs within the Same-Day Settling Service would occur on the same business day as Trade Comparison, such transactions would generally not be netted.²⁹ Instead, FICC would settle such transactions on a trade-for-trade basis. Transactions that FICC settles on a trade-for-trade basis (i.e., transactions that are not netted) settle at “Contract Value,” which means the dollar value at which the transaction is to be settled on the scheduled settlement date.³⁰ Transactions that settle on a future date (i.e., transactions that are netted) settle at “System Value,” which includes accrued interest. For consistency with the foregoing, FICC proposes to clarify the Rules with respect to the Same-Day Settling Service to reflect that any leg of a DVP repo to be settled on a trade-for-trade basis would settle at Contract Value, whereas any leg to be settled on a future date would settle at System Value.³¹

²⁹ The Start Leg of same-day starting repos would be netted in the limited scenario of a brokered repo settlement fail on the scheduled settlement date. See supra note 8; Notice of Filing, supra note 4 at 85744.

³⁰ See Rule 1 – Definitions, supra note 6.

³¹ For example, for an overnight repo that is an As-Of Trade, both legs would settle at Contract Value because both would settle on the date of Trade Comparison and therefore would not be netted. For an overnight repo that is a same-day starting repo, the Start Leg would settle on the date of Trade Comparison at Contract Value, whereas the End Leg would be netted that evening and settle the following business day at System Value. For an overnight repo that is forward starting (i.e., both legs would settle on dates in the future), both legs would be subject to netting and settle at System Value. Notice of Filing, supra note 4 at 85746.

4. Late-Day Compared Trades

FICC states that members occasionally execute same-day starting repos after the close of the Fedwire Securities Service (“Fedwire”), which is the service that members generally use for settling bilateral securities obligations.³² Currently, such trades settle bilaterally between the parties outside of FICC, provided that both parties use the same clearing bank for settlement. In the Advance Notice, FICC proposes to include such late-day trades in the Same-Day Settling Service (i.e., FICC proposes to act as CCP for the Start Leg) on a reasonable efforts basis, meaning that FICC would attempt to contact the parties to the trade and FICC’s clearing bank to confirm agreement to settle the trade.³³

Specifically, for members that clear at FICC’s clearing bank, FICC would attempt to settle any same-day starting repos that are compared between 3:01 p.m. and 5:00 p.m., provided that (1) FICC is able to contact the parties to the trade and FICC’s clearing bank, and (2) the parties and FICC’s clearing bank agree to settle the trade. For members that do not clear at FICC’s clearing bank, FICC proposes to attempt to settle, on a reasonable efforts basis, same-day starting repos that are compared during the Fedwire reversal period between 3:01 p.m. and 3:30 p.m., provided that (1) FICC is able to contact FICC’s clearing bank and the parties to the trade, (2) FICC’s clearing bank and

³² The Fedwire is a service provided by the Federal Reserve Banks that includes settlement and transfer of DVP securities transactions. The Fedwire operates daily from 8:30 a.m. to 3:30 p.m. (All times herein are Eastern Time.) See Fedwire and National Securities Service, Federal Reserve Bank of New York (March 2015), available at <https://www.newyorkfed.org/aboutthefed/fedpoint/fed43.html>; Fedwire Securities Service, Board of Governors of the Federal Reserve System (July 31, 2014), available at https://www.federalreserve.gov/paymentsystems/fedsecs_about.htm.

³³ See Notice of Filing, supra note 4 at 85748.

the parties to the trade confirm agreement to settle the trade, and (3) FICC's clearing bank, the member's clearing bank, and the Federal Reserve Bank of New York each permit settlement of the trade.

5. Other Changes to FICC's Rules to Incorporate the Same-Day Settling Service

In the Advance Notice, FICC proposes changes to several Rule provisions to ensure the relevant applicability of such provisions to the Same-Day Settling Service. FICC proposes to add a newly defined term "Same-Day Settling Trade" to capture the universe of DVP repos that would be covered by the Same-Day Settling Service. FICC proposes to modify the definitions of "Deliver Obligation" and "Receive Obligation" to include references to Same-Day Settling Trades. FICC proposes to modify the definitions of "Settlement Value" and "System Value" to contemplate that Same-Day Settling Trades could settle at Contract Value or System Value, depending on the circumstances of the trade, as described above.

FICC proposes to incorporate Same-Day Settling Trades into the existing Rule provisions governing the Comparison System and Netting System. FICC proposes to add Rule provisions addressing eligibility requirements for Same-Day Settling Trades to qualify for FICC's novation and settlement guarantee. FICC proposes to incorporate Same-Day Settling Trades into the Rule provisions governing how parties satisfy their obligations to FICC, including trades that become uncomparated or canceled. FICC proposes to incorporate Same-Day Settling Trades into the Rule provisions dealing with settlement fails. Finally, FICC proposes to include appropriate cross-references to ensure that various Rule provisions related to general securities settlement apply to Same-Day Settling Trades.

C. Proposed Pair-Off Service

Settlement fails occur because one party does not have inventory to settle with the other party on the scheduled settlement date. Currently, a member's obligations that remain unsettled when the Fedwire closes go through FICC's overnight netting system for settlement the following business day, and the member is subject to FICC's fails charge.³⁴ In a scenario where a member has offsetting unsettled failed obligations in the same security (i.e., separate failed obligations to both deliver and receive the same security) after the close of the Fedwire, those obligations currently go through the overnight netting system for settlement the following day.

In the Advance Notice, FICC proposes an optional service for members whereby FICC would pair-off a member's offsetting failed securities settlement obligations each day, beginning at 3:32 p.m. (shortly after the Fedwire closes) until 4:00 p.m. (the "Pair-Off Service").³⁴ Additionally, the member would receive either a debit or credit, as applicable, to account for any difference in the settlement value of its deliver and receive obligations as part of FICC's intraday funds-only settlement ("FOS") process. Therefore, the proposed Pair-Off Service would enable participating members to settle their obligations on the day they arise, rather than continuing to the next day as unsettled failed obligations, as they would under the current practice. Failed obligations that remain unsettled overnight present market risk exposure to both FICC and the parties to such trades. FICC believes that by enabling the earlier settlement of a member's offsetting obligations, the proposed Pair-Off Service could reduce such overnight market risk.³⁵

³⁴ See Section 14, Rule 11 – Netting System, supra note 6.

³⁵ See Notice of Filing, supra note 4 at 85749-50.

FICC proposes to start the Pair-Off Service at approximately 3:32 p.m., and provide FOS banks with their intraday net FOS figures by 4:00 p.m. for acknowledgement by 4:30 p.m. Accordingly, FICC proposes to change the timing of FOS processing from the current time of 3:15 p.m. to 4:30 p.m. to enable FICC to settle any net money differences that would arise from the proposed Pair-Off Service.

II. DISCUSSION AND COMMISSION FINDINGS

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.³⁶

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.³⁷ Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):³⁸

- to promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and

³⁶ See 12 U.S.C. 5461(b).

³⁷ 12 U.S.C. 5464(a)(2).

³⁸ 12 U.S.C. 5464(b).

- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission’s risk management standards may address such areas as risk management and default policies and procedures, among others areas.³⁹

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the “Clearing Agency Rules”).⁴⁰ The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.⁴¹ As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the proposals in the Advance Notice are consistent with the objectives and

³⁹ 12 U.S.C. 5464(c).

⁴⁰ 17 CFR 240.17Ad-22. See Securities Exchange Act Release No. 68080 (October 22, 2012), 77 Fed. Reg. 66220 (November 2, 2012) (S7-08-11). See also Securities Exchange Act Release No. 78961 (September 28, 2016), 81 Fed. Reg. 70786 (October 13, 2016) (S7-03-14) (“Covered Clearing Agency Standards”). FICC is a “covered clearing agency” as defined in Rule 17Ad-22(a)(5).

⁴¹ Id.

principles described in Section 805(b) of the Clearing Supervision Act⁴² and in the Clearing Agency Rules, in particular Rule 17Ad-22(e)(21).⁴³

A. Consistency with Section 805(b) of the Clearing Supervision Act

The Commission believes that the Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act because the changes proposed in the Advance Notice are consistent with reducing systemic risks, supporting the stability of the broader financial system, promoting robust risk management, and promoting safety and soundness.⁴⁴

The Commission believes that the proposals in the Advance Notice are consistent with the principles of reducing systemic risk and supporting the stability of the broader financial system. When a CCP novates a trade and takes offsetting and guaranteed positions between the two original parties to the trade, the length of time from novation to trade settlement may affect the CCP's exposure to credit, market, and liquidity risk. For example, settlement fails extend the time to settlement and can thereby present risk to the CCP that a member's positions and other resources that the CCP holds (generally, the member's margin) decline in market value as the CCP considers whether and how it might liquidate, transfer, or otherwise dispose of such assets to minimize losses. Settlement fails can also affect the amount of liquidity risk a CCP may need to bear for purposes of settling an unsettled trade because CCPs may rely on incoming payments from some members to facilitate payments to other members. For FICC's members, a

⁴² 12 U.S.C. 5464(b).

⁴³ 17 CFR 240.17Ad-22(e)(21)(i), (ii), and (iii).

⁴⁴ 12 U.S.C. 5464(b).

settlement fail on a securities delivery obligation causes the non-failing party to withhold payment while settlement is rescheduled for the following business day and until the trade ultimately settles. In the interim, the non-failing party cannot use the securities, which it may have already committed to deliver in subsequent trading activity, giving rise to the risk of further settlement fails. Also, the failing party does not have use of the cash proceeds from the trade. Settlement fails can, therefore, undermine the liquidity of a well-functioning market, and a member default could lead to the default of other members and market participants as well. Settlement fails can therefore be a source of systemic risk and instability to the broader market.

As described above in Section I.A., FICC currently acts as CCP for only the End Leg of a same-day starting DVP repo. The Start Leg currently settles bilaterally outside of FICC between the parties to the trade. Trades that settle bilaterally outside of FICC are generally exposed to more operational risk and consequently may result in more settlement fails than trades which are novated and risk-managed by FICC in its role as CCP.⁴⁵

By centralizing settlement of the Start Leg of same-day starting repos, the proposal would eliminate the current bilateral settlement of securities between the parties. Once the Start Leg is subject to FICC's settlement guarantee, a settlement fail would be contained between the failing party and FICC. Even if the start leg were to fail, FICC's margin collection and other risk mitigation measures would be in place to protect the non-failing party originally on the other side of the trade. The Same-Day Settling Service would thereby likely reduce the spread of settlement fails to other market participants.

⁴⁵ See supra note 18.

As a result, the Commission believes that the Same-Day Settling Service could reduce the risk associated with settlement fails in the DVP repo market. More broadly, by preventing the spread of settlement fails to other market participants, the Same-Day Settling Service also could help reduce systemic risk and support the stability of the broader financial system.

Additionally, as discussed above in Section I.A., trades facilitated by a Repo Broker that settle outside of FICC require multiple bilateral securities movements between the parties to the trade and the Repo Broker. The greater the number of bilateral securities movements involved in trade settlement, the greater the potential for operational risk resulting in settlement fails. FICC currently manages the risk of a failed Start Leg for a brokered repo by assuming responsibility for trade settlement on the evening of the original scheduled settlement date. While this approach decreases further settlement risk, it neither prevents the original settlement fail nor does it eliminate the multiple bilateral securities movements for settling the Start Leg until after a settlement fail. For participating Repo Brokers, the Same-Day Settling Service would eliminate the bilateral securities movements and the associated risk of settlement fails because FICC would novate and guarantee settlement of the Start Leg upon Trade Comparison. As a result, the Commission believes that the Same-Day Settling Service could improve efficiency in the settlement process for brokered DVP repos and thereby reduce the risk of settlement fails.

Finally, as discussed above in Section I.C., the proposed Pair-Off Service would enable participating members to settle their offsetting failed securities settlement obligations each day after the Fedwire closes. FICC's current process is for such failed

obligations to go through the evening netting system, with settlement rescheduled for the following business day. The proposed Pair-Off Service represents a more efficient process for resolving failed settlement obligations because settlement would occur on the day they arise, rather than continuing as settlement fails to the next business day. Moreover, failed obligations that remain unsettled overnight present market risk exposure to both FICC and the parties to such trades. By enabling the earlier settlement of a member's offsetting obligations, the proposed Pair-Off Service could reduce such overnight market risk.

For the reasons discussed above, the Commission believes that the proposals in the Advance Notice could minimize the occurrence of settlement fails, reduce associated risks, and improve settlement efficiency. Accordingly, the Commission believes that the proposals in the Advance Notice are consistent with the objectives of reducing systemic risks and supporting the stability of the broader financial system.⁴⁶

The Commission further believes that FICC's proposals in the Advance Notice are consistent with the objectives of promoting robust risk management and promoting safety and soundness. First, as discussed above in Section I.A., FICC currently acts as CCP for the End Leg of same-day starting repos. In that role, FICC risk manages, novates, and guarantees settlement of such trades. The proposed Same-Day Settling Service would expand FICC's role as CCP to include the Start Leg of same-day starting repos, thereby applying FICC's existing risk management standards to such trades. The Commission believes that extending FICC's existing risk management standards in acting

⁴⁶ Id.

as CCP for the Start Leg of same-day settling repos is consistent with the objective of promoting robust risk management.⁴⁷

Additionally, as discussed above in Section I.C., the proposed Pair-Off Service would enable participating members to settle their offsetting failed securities settlement obligations each day, shortly after the Fedwire closes. FICC's current process is for such failed obligations to go through the evening netting system, with settlement rescheduled for the following business day. The proposed Pair-Off Service represents a more efficient process for resolving failed settlement obligations because settlement would occur on the day they arise, rather than continuing as settlement fails to the next business day. As discussed above, failed obligations that remain unsettled overnight present market risk exposure to both FICC and the parties to such trades. By enabling the earlier settlement of a member's offsetting obligations for those members who choose to use the service, the proposed Pair-Off Service could reduce such overnight market risk and protect FICC from sustaining associated losses. Accordingly, the Commission believes that adopting the proposed Pair-Off Service is consistent with the objectives of promoting robust risk management and promoting safety and soundness.⁴⁸

B. Consistency with Rule 17Ad-22(e)(21)

Rule 17Ad-22(e)(21) under the Exchange Act requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves, and have the covered clearing agency's

⁴⁷ Id.

⁴⁸ Id.

management regularly review the efficiency and effectiveness of its (i) clearing and settlement arrangements, (ii) operating structure, including risk management policies, procedures and systems, and (iii) scope of products cleared or settled.⁴⁹

As discussed above in Section I.B, the proposed Same-Day Settling Service would eliminate bilateral settlements between the parties to the Start Leg of a DVP repo and allow FICC to settle both the Start and End Legs of a DVP Repo. In that regard, the proposed Same-Day Settling Service represents a more efficient and effective settlement process than FICC's current process, which generally includes bilateral settlement of the Start Leg. FICC designed the Same-Day Settling Service in response to requests from its members, to mitigate the operational risk that can result in settlement fails. As discussed above, if not contained, settlement fails can spread to other market participants and undermine the liquidity of a well-functioning market.⁵⁰ In contrast, reducing the occurrence of settlement fails (and their resultant effects) would strengthen broader market liquidity. Therefore, by reducing the risk of settlement fails, the proposal would benefit FICC's members when it results in transactions that settle on time that might have otherwise failed, with lower overall transaction costs. Accordingly, the Commission believes that adopting the proposed Same-Day Settling Service would be consistent with Rule 17Ad-22(e)(21)⁵¹ because the proposal would broaden the scope of the DVP Service to include the Start Leg of same-day starting repos in a manner designed to be efficient

⁴⁹ 17 CFR 240.17Ad-22(e)(21).

⁵⁰ Additionally, when a FICC member fails to meet its settlement obligations, the member incurs FICC's fails charge, which could further impact the member's liquidity. See Section 14, Rule 11 – Netting System, supra note 6.

⁵¹ 17 CFR 240.17Ad-22(e)(21).

and effective in reducing settlement fails to the benefit of FICC's members and the broader DVP repo market.

Moreover, as discussed above in Section I.C, the proposed Pair-Off Service would enable participating members to settle their offsetting failed securities settlement obligations each day, shortly after the Fedwire closes. Under FICC's current process, such failed obligations go through the evening netting system, with settlement rescheduled for the following business day. The proposed Pair-Off Service represents a more efficient process for resolving failed settlement obligations because settlement would occur on the day the obligations arise, rather than continuing as settlement fails to the next business day. As discussed above, failed obligations that remain unsettled overnight present market risk exposure to both FICC and the parties to such trades. By enabling earlier settlement of a member's offsetting obligations, the proposed Pair-Off Service could reduce such overnight market risk. Accordingly, the Commission believes that adopting the proposed Pair-Off Service would be consistent with Rule 17Ad-22(e)(21)⁵² because the proposal would enable the earlier settlement of a member's offsetting failed obligations in a manner designed to be efficient and effective in reducing overnight market risk to the benefit of FICC's members.

⁵²

Id.

III. CONCLUSION

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission DOES NOT OBJECT to Advance Notice (SR-FICC-2020-803) and that FICC is AUTHORIZED to implement the proposed change as of the date of this notice or the date of an order by the Commission approving proposed rule change SR-FICC-2020-015, whichever is later.

By the Commission.

J. Matthew DeLesDernier
Assistant Secretary