

adopting Rule 10b-17 will not be implicated.<sup>7</sup>

### Conclusion

*It is hereby ordered*, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to Shares of the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

*It is further ordered*, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

*It is further ordered*, pursuant to Rule 10b-17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b-17 with respect to the transactions in the Shares of the Fund.

The exemption from Rule 10b-17 is subject to the following conditions:

- The Trust will comply with Rule 10b-17, except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. These exemptions are based on the facts presented and the representations made in the Letter. Any different facts or representations may require a different response. Persons relying upon this exemptive relief shall promptly present the facts for the Commission's consideration in the

event that any material change occurs with respect to any of the facts or representations made by the Requestors, and, as is the case with all preceding relief for ETFs, particularly with respect to the close alignment between the market price of Shares and the Fund's NAV. In addition, persons relying on these exemptions are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on these exemptions.

This Order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to, the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

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

[FR Doc. 2017-09080 Filed 5-4-17; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32620; 812-14739]

#### ClearShares, LLC et al.

May 1, 2017.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain

Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds; and (f) certain Funds ("Feeder Funds") to create and redeem Creation Units in-kind in a master-feeder structure.

**APPLICANTS:** ETF Series Solutions ("Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, ClearShares LLC ("ClearShares"), a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940, and Quasar Distributors, LLC ("Distributor"), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act").

**FILING DATES:** The application was filed on January 24, 2017.

**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 writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 26, 2017, and should be accompanied by proof of service on 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 writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: W. John McGuire, Esq., Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue NW., Washington, DC 20004-2541 and Michael D. Barolsky, Esq., U.S. Bancorp Fund Services, LLC, 615 E. Michigan Street, Milwaukee, WI 53202.

**FOR FURTHER INFORMATION CONTACT:** Rochelle Kauffman Plesset, Senior Counsel, at (202) 551-6840 or Daniele

<sup>7</sup> We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the Fund's nature because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Further, the Commission finds, based on the Requestors representations in the Letter, that the provision of notices as described in the Letter would not constitute a manipulative or deceptive device or contrivance comprehended within the purpose of Rule 10b-17.

<sup>8</sup> 17 CFR 200.30-3(a)(6) and (9).

Marchesani, Assistant Chief Counsel, at (202) 551-6747 (Division of Investment Management, Chief Counsel's Office).

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

### Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds ("ETFs").<sup>1</sup> Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant", which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions ("Portfolio Instruments"). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each

correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii)

overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.<sup>2</sup> The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the

<sup>1</sup> Applicants request that the order apply to the new series of the Trust as well as to additional series of the Trust and any other open-end management investment company or series thereof that currently exist or that may be created in the future (each, included in the term "Fund"), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by ClearShares or an entity controlling, controlled by, or under common control with ClearShares (each, an "Adviser") and (b) comply with the terms and conditions of the application.

<sup>2</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

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

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-09065 Filed 5-4-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80563; File No. SR-FICC-2017-003]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Expand the Types of Entities That Are Eligible To Participate in Fixed Income Clearing Corporation as Sponsored Members and Make Other Changes

May 1, 2017.

#### I. Introduction

On March 1, 2017, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-FICC-2017-003, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> On March 13, 2017, FICC filed Amendment No. 1 to the proposed rule change, which amended and replaced the original filing in its entirety (hereinafter, “Proposed Rule Change”). The Proposed Rule Change was published for comment in the **Federal Register** on March 17, 2017.<sup>3</sup> The Commission received four comment letters<sup>4</sup> to the Proposed Rule Change,

including a response letter from FICC. For the reasons discussed below, the Commission is approving the Proposed Rule Change.

#### II. Description of the Proposed Rule Change

The Proposed Rule Change consists of changes to the Government Securities Division (“GSD”) Rulebook (“Rules”)<sup>5</sup> in order to (i) expand the types of entities that are eligible to participate in FICC’s Sponsored Membership program as Sponsored Members, and (ii) make amendments and clarifications to the Rules relating to the Sponsored Membership service in general.

##### A. The Proposed Expansion of Sponsored Member Eligibility

Currently, GSD Bank Netting Members that are well-capitalized with at least \$5 billion in equity capital are permitted to serve as Sponsoring Members and sponsor certain institutional firms into GSD membership as Sponsored Members.<sup>6</sup> A Sponsoring Member is permitted to submit to FICC for comparison, novation, and netting certain types of eligible transactions between itself and its Sponsored Members (“Sponsored Member Trades”).<sup>7</sup> For operational and administrative purposes, FICC interacts solely with the Sponsoring Member as agent for purposes of the day-to-day satisfaction of its Sponsored Members’ obligations to FICC, including the Sponsored Members’ securities and funds-only settlement obligations.<sup>8</sup>

Currently, eligibility to become a Sponsored Member is limited to investment companies that are registered under the Investment Company Act of 1940<sup>9</sup> (each, a “Registered Investment Company” or “RIC”) and that meet the definition of

a qualified institutional buyer (“QIB”), as defined in Rule 144A<sup>10</sup> under the Securities Act of 1933.<sup>11</sup>

The Proposed Rule Change would eliminate the RIC requirement. However, in order to ensure that Sponsored Members are financially sophisticated, FICC would retain the QIB requirement to the extent that the Sponsored Member’s legal entity type falls under one of the enumerated categories of Rule 144A’s QIB definition.<sup>12</sup> For institutional firms whose entity types do not clearly fall into one of the enumerated categories in Rule 144A’s QIB definition, FICC proposes to require that such Sponsored Members satisfy the financial requirements that an entity specifically listed in paragraph (a)(1)(i) of Rule 144A must satisfy in order to be a QIB.<sup>13</sup>

Because the proposal would newly permit non-U.S. entities to become Sponsored Members, FICC proposes to amend the GSD Rules to provide that such entities would be considered FFI Members<sup>14</sup> subject to FATCA compliance obligations.<sup>15</sup>

The proposal would also clarify that the existing requirement on all Sponsored Members and their Sponsoring Members to comply with all applicable laws includes the requirement to comply with global sanctions laws.

<sup>10</sup> 17 CFR 230.144A.

<sup>11</sup> 15 U.S.C. 77a *et. seq.*

<sup>12</sup> 17 CFR 230.144A(a)(1)(i) defines a qualified institutional buyer as an entity “. . . acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity. . . .”

<sup>13</sup> See Notice, 82 FR at 14266. Because conceptions of financial sophistication may change over time, FICC’s proposal ties this requirement to the QIB definition in Rule 144A, as such definition may be amended from time to time.

<sup>14</sup> See Notice, 82 FR at 14267. Pursuant to Rule 1, the term “FFI Member” means “any Person that is treated as a non-U.S. entity for U.S. federal income tax purposes.” Rules, *supra* note 5. For the avoidance of doubt, the term FFI Member also includes “any Member that is a U.S. branch of an entity that is treated as a non-U.S. entity for U.S. federal income tax purposes.” *Id.*

<sup>15</sup> FATCA is the Foreign Account Tax Compliance Act, 26 U.S.C. 1471 *et seq.* The Rules define FATCA Compliant to mean that an “. . . FFI Member has qualified under such procedures promulgated by the Internal Revenue Service . . . to establish exemption from withholding under FATCA such that [FICC] would not be required to withhold [anything] under FATCA . . . .” Rules, *supra* note 5. Although GSD has Members, including certain Bank Netting Members, which are non-U.S. entities, currently there are no Sponsoring Members that are non-U.S. entities. See Notice, 82 FR at 14267. Any future Sponsoring Member or Sponsored Member that is an FFI Member will be subject to the same FATCA Compliance screening as any other Member that is a non-U.S. entity. Proposed Rule 3A, Section 3.

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

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

<sup>3</sup> Securities Exchange Act Release No. 80236 (March 14, 2017), 82 FR 14265 (March 17, 2017) (SR-FICC-2017-003) (“Notice”).

<sup>4</sup> See letter from Stefan M. Gavell, Executive Vice President and Head of Regulatory, Industry and Government Affairs, State Street Corporation (“State Street”), dated April 7, 2017, to Brent J. Fields, Secretary, Commission (“State Street

Letter”); letter from Robert E. Pooler Jr., Chief Financial Officer, Ronin Capital, LLC (“Ronin”), dated April 7, 2017, to Robert W. Errett, Deputy Secretary, Commission (“Ronin Letter I”); letter from Murray Pozmanter, Managing Director, FICC, dated April 17, 2017, to Robert W. Errett, Deputy Secretary, Commission (“FICC Letter”); letter from Robert E. Pooler Jr., Chief Financial Officer, Ronin, dated April 20, 2017, to Robert W. Errett, Deputy Secretary, Commission (“Ronin Letter II”) available at <https://www.sec.gov/comments/sr-ficc-2017-003/ficc2017003.htm>.

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

<sup>6</sup> Rule 3A, Section 2, *supra* note 5.

<sup>7</sup> The Sponsoring Member is required to establish an omnibus account at FICC for all of its Sponsored Members’ FICC-cleared activity (“Sponsoring Member Omnibus Account”), which is separate from the Sponsoring Member’s regular netting account. Rule 1; Rule 3A, Section 10, *supra* note 5.

<sup>8</sup> See Rule 3A, Sections 5, 6, 7, 8 and 9, *supra* note 5.

<sup>9</sup> 15 U.S.C. 80a-1 *et. seq.*