

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-FICC-2005-03. This file number should be included on the subject line if e-mail 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 Web site (<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 inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at [www.ficc.com](http://www.ficc.com). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2005-03 and should be submitted on or before March 9, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51175; File No. SR-FICC-2004-19]

**Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change Relating to Changes To Eliminate or Amend Rules That Are Inconsistent With Current Practice, Have Expired, Are Outdated, Are Unnecessary, or Require Technical Correction**

February 9, 2005.

**SUMMARY:** On October 7, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> (File No. SR-FICC-2004-19). Notice of the proposal was published in the **Federal Register** on December 29, 2004.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

**I. Description**

The proposed rule change will eliminate or amend FICC's Government Securities Division ("GSD") and Mortgage-Backed Securities Division ("MBSD") rules in the following manner:

*1. Delete Provisions in GSD's Rules Regarding the Automated Customer Account Transfer Service ("ACATS")*

The ACATS provisions were added to GSD's rules in 1998, when the National Securities Clearing Corporation requested that the Government Securities Clearing Corporation ("GSCC"), the GSD's predecessor, establish with it an interface that would enable account transfers involving netting-eligible government securities to be processed using GSCC's existing netting and settlement processes. This service was never implemented, and its continued reference in the rules is inconsistent with current practice.

*2. Delete Provisions From GSD's Rules That Designate Participation in the Repo Comparison and Netting Processes*

GSD's rules used to refer to FICC as designating a member to be eligible to participate in the repo comparison and repo netting processes. When these repo services commenced in 1995, GSCC required testing prior to participation

and subsequently designated members as eligible to participate in the services. Participation in these services has now become commonplace and special testing and designation for participation in the repo services is no longer necessary. As such, the provisions in question are outdated and are being deleted.

*3. Make Technical Corrections to GSD Rules By*

i. Changing the definitions of "Interest Adjustment Payment" and "Interest Rate Mark Adjustment Payment" in GSD Rule 1 (Definitions) to correct an erroneous reference in both definitions to the "Federal Funds Rate" and replacing them with references to a newly defined term, "Overnight Investment Rate;"

ii. changing the term in Rule 1 "Multilateral Clearing Organization" to "Multilateral Clearing Agency;"

iii. changing the language of the definition in Rule 1 of "Member" to reflect the fact that certain members (*i.e.*, comparison-only members) are approved for membership by senior management and not by the Membership and Risk Management Committee;

iv. correcting Section 1(d) of Rule 2, where GSD is erroneously referred to as its predecessors name, GSCC;

v. deleting subsection (b) of Rule 11B, which has expired;

vi. changing an incorrect reference to "Rule 7" to "Rule 6C" in Rule 17, Section 4; and

vii. changing a reference to the "Membership and Standards Committee" to the "Membership and Risk Management Committee" in Rule 48, Section 2.

*4. Technical Corrections in the MBSD Rules*

FICC will renumber MBSD Rule 15 (Notices) of Article X to Rule 16 as it is in fact the 16th rule in that article.

**II. Discussion**

Section 17A(b)(3)(A) of the Act requires, among other things, that a clearing agency be organized to facilitate the prompt and accurate clearance and settlement of securities transactions.<sup>3</sup> FICC's proposed rule change will eliminate unnecessary or outdated provisions, and make technical changes. This should promote greater transparency and understanding of FICC's actual practices and policies, which should enhance FICC's organizational capacity to facilitate the

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

<sup>2</sup> Securities Exchange Act Release No. 50888 (Dec. 20, 2004), 69 FR 78073.

<sup>3</sup> 15 U.S.C. 78q-1(b)(3)(A).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

prompt and accurate clearance and settlement of securities transactions.

### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>4</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-FICC-2004-19) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51146; File No. SR-FICC-2004-13]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change To Amend the Rules of the Mortgage-Backed Securities Division To Impose Fines on Members for Violations of Minimum Financial Standards and To Modify the Penalty Assessment Process for Failures of Members To Submit Requisite Financial Reports on a Timely Basis

February 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 24, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on February 2, 2005, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to amend the rules of its Mortgage-Backed Securities Division ("MBSD") to impose fines on members for violations of minimum financial

standards and to modify the penalty assessment process for failures of members to submit requisite financial reports on a timely basis.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would amend the rules of the MBSD by imposing fines on members for violations of minimum financial standards and by modifying the penalty assessment process for failures of members to submit requisite financial reports on a timely basis.

##### 1. Violations of Minimum Financial Standards

The rules of the MBSD require clearing members to meet and maintain certain minimum financial standards at all times. While the majority of MBSD members consistently satisfy their minimum financial requirements, occasionally members do breach these requirements and create undue risk for FICC and its members.

Currently, the MBSD rules do not impose specific margin consequences for falling out of compliance with minimum financial requirements but allow the Membership and Risk Management Committee in its discretion to impose conditions which can include an increase to the participant's minimum required deposits to the Participants Fund.

Under the proposed rule change, a violation of a minimum financial requirement by an MBSD clearing participant would result in the imposition on such member of a margin premium equal to the greater of (a) 25 percent of the member's unadjusted<sup>3</sup> Participants Fund requirement or (b) \$1,000,000, to continue for ninety calendar days after the later to occur of

(i) the member's return to compliance with applicable minimum financial standards or (ii) FICC's discovery of the applicable violation.<sup>4</sup> In addition, such violation would result in (1) a report of the violation to the FICC Membership and Risk Management Committee at its next regularly scheduled meeting or sooner if deemed appropriate by FICC and (2) the placement of such member on FICC's "watch list" subjecting it to frequent and thorough monitoring. None of these consequences would preclude FICC from imposing any other margin consequences permitted by the MBSD rules.

##### 2. Failure To Submit Requisite Financial Reports on a Timely Basis

Certain members that are required to provide monthly or quarterly financial data to FICC at times have violated MBSD's membership requirements by not timely providing such financial data. In such instances, management contacts each offending member and follows up with a letter.

Failure to timely receive required information creates risk to FICC and as a result hinders FICC's ability to appropriately assess the financial condition of such members. To encourage timely submission of required financial data, FICC has established a mechanism to fine delinquent participants.<sup>5</sup> FICC is now proposing two additional measures to enforce timely filing of financial information.

First, FICC proposes to subject delinquent participants to a more stringent Participants Fund requirement. Specifically, the proposed rule filing would automatically impose a margin premium equal to the greater of (1) 25 percent of the member's unadjusted Participants Fund requirement or (2) \$1,000,000. The margin premium would be applied until appropriate financial data is submitted to FICC and reviewed for compliance purposes. In addition, delinquent members would be precluded from taking back any excess Participants Fund collateral to which they might ordinarily be entitled.

Second, participants that fail to submit requisite financial reports on a timely basis would also automatically be placed on FICC's "watch list" and

<sup>4</sup> The required clearing fund deposit premium that will be assessed for violation of applicable minimum financial standards will be effective beginning on the day of the violation but will begin to be assessed on the date FICC becomes aware of the violation.

<sup>5</sup> Securities Exchange Act Release No. 49947 (June 30, 2004), 69 FR 41316 [File No. SR-FICC-2003-01].

<sup>2</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>3</sup> "Unadjusted" means the standard calculation before any additional assessments.

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 17 CFR 200.30-3(a)(12).

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