

things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The CBOE believes that the SizeQuote Mechanism will create enhanced incentives for ICMPs to quote competitively by giving ICMPs that respond to a SizeQuote request at the best price priority to trade with the SizeQuote Order at that best price and at the improved best price (*i.e.*, one trading increment better), as described above.<sup>10</sup> Moreover, ICMPs will have only one opportunity to respond to a SizeQuote request, and ICMPs that do not respond at the best price will lose the opportunity to trade with the SizeQuote Order. The Commission believes that these procedures may encourage ICMPs to quote more competitively. The Commission notes, in addition, that if ICMPs providing SizeQuote responses do not execute the entire SizeQuote Order, the floor broker representing the SizeQuote Order must trade any remaining contracts at the best price, or at the improved best price, as applicable. At the same time, because the floor broker would be permitted to execute the entire SizeQuote Order at two increments better than the ICMPs' best price, the Commission believes it is essential for the Exchange to monitor the impact of the proposed rule change on the competitive process. Thus, the Commission is approving the proposed rule change on a one-year pilot basis. The CBOE has represented that it will provide the Commission, at the end of the pilot period, a report summarizing the effectiveness of the SizeQuote Mechanism. The Commission intends to carefully review this report before approving any extension of the program.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-CBOE-2004-72), as amended, is approved on a pilot basis until February 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>10</sup> A public customer order in the electronic book has priority to trade with a SizeQuote Order over any ICMP providing a SizeQuote response at the same price as the order in the electronic book. See CBOE Rule 6.74(f)(i)(C).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51206; File No. SR-FICC-2004-23]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Change the Notice Period Required for the Closing of Participant Accounts or Withdrawing From Membership in Its Mortgage-Backed Securities Division

February 15, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 22, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") 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

The purpose of this proposed rule change is to amend the notice period required for the closing of participant accounts or withdrawing from membership in the Mortgage-Backed Securities Division ("MBSD") of FICC.

#### 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 purpose of the proposed rules changes is to amend the timeframe in which a participant, limited purpose participant, or EPN user can cease to maintain an account or can voluntarily withdraw as a participant from the

Mortgage-Backed Securities Division ("MBSD") of FICC.

Currently, the MBSD's Rules expressly state that in order to cease to maintain an account or to voluntarily withdraw as a participant, a participant must notify FICC of its intent to do so in writing, and thereafter FICC management and the participant must wait ten days for the cessation or withdrawal to become effective. Upon review, FICC has determined that imposing this mandatory time period is unnecessary. FICC believes it should have the flexibility, and thereby provide greater flexibility to participants, to close an account or permit withdrawal within a shorter period. The proposed changes would provide this flexibility by providing that (1) a participant must provide ten days' written notice of account cessation or withdrawal from membership but the MBSD can accept termination within a shorter period; (2) the requested account cessation or withdrawal would not be effective until accepted by the MBSD, and (3) the MBSD's acceptance will be evidenced by a notice to all members announcing the account cessation or withdrawal effective date.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>3</sup> and the rules and regulations thereunder applicable to FICC because the proposed rule change will provide the FICC with greater flexibility with respect to closing accounts of participants and to permitting the voluntary withdrawal of participants thereby better enabling it to safeguard the securities and funds in its custody and control.

##### (B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

##### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

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

Within thirty-five days of the date of publication of this notice in the **Federal**

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

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

<sup>3</sup> 15 U.S.C. 78q-1.

**Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2004-23 on the subject line.

##### *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-2004-23. 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 <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-2004-23 and should be submitted on or before March 15, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51187; File No. SR-NASD-2005-021]

### Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Provide Guidance Regarding Members' Regulatory Transaction Fees

February 10, 2005.

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> notice is hereby given that on February 4, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD is filing *Notice to Members* ("NtM") 05-11, providing further guidance regarding members' obligations under Section 3 of Schedule A to the NASD By-Laws (Regulatory Transaction Fees) and a self-reporting

form that is used by members to report trade data that is not captured.

No changes to the text of NASD rules are required by this proposed rule change.

#### II. Self-Regulatory OrgChange

In its filing with the Commission, NASD 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. NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

###### 1. Purpose

In August 2004, NASD issued *NtM* 04-63 (Transaction Fees: New SEC Procedures Relating to section 31 of the Securities Exchange Act of 1934) informing member firms of the new Commission procedures governing the calculation, payment, and collection of fees and assessments on securities transactions owed by national securities exchanges and associations to the Commission pursuant to section 31 of the Act. *NtM* 04-63 also discussed the obligations of member firms under section 3 of Schedule A to the NASD By-Laws in light of the new Commission procedures.

Following the publication of *NtM* 04-63, NASD staff has received a significant number of questions from member firms regarding these obligations. Accordingly, NASD staff is providing further guidance regarding these obligations in *NtM* 05-11. In *NtM* 05-11, NASD staff is, among other things, providing guidance on what constitutes an away-from-the-market sale and additional information regarding member firms' self-reporting obligations. NASD also is reminding members about the restrictions on the use of the Step-Out function in ACT for transferring NASD's regulatory transaction fee to correspondents or broker-dealer customers. In addition, *NtM* 05-11 is revoking prior guidance concerning the appropriate rounding methodology used by member firms when they choose to pass regulatory transaction fees to their customers. Specifically, the guidance in *NtM* 05-11 regarding rounding supersedes the rounding guidance provided in *NtM* 04-63 or any prior *NtMs* and *Member Alerts*.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).