

monitored monthly or quarterly, depending upon the member's financial filing frequency, against basic minimum financial requirements and other parameters.

All broker-dealer members included on the watch list are monitored more closely. This means that they are also monitored for various parameter breaks which may include but are not limited to such things as a defined decline in excess net capital over a one month or three month period, a defined period loss, a defined aggregate indebtedness/net capital ratio, a defined net capital/aggregate debit items ratio, and a defined net capital/regulatory net capital ratio. All bank members included on the watch list are also monitored more closely for watch list parameter breaks which may include but are not limited to such things as a defined quarter loss, a defined decline in equity, a defined tier one leverage ratio, a defined tier one risk-based capital ratio, and a defined total risk-based capital ratio. FICC wishes to make clear that monitoring for the above more stringent parameter breaks is only applicable to those members placed on the watch list.

In addition, FICC would like to address footnote 5 of Amendment I to rule filing SR-FICC-2003-03. That footnote stated that credit risk staff would monitor those members not included in the Matrix process (this includes members that are not domestic banks and broker dealers) using the same criteria as those used for members included on the Matrix. FICC wishes to make clear that credit risk staff will not be using the same criteria to monitor these members but will use similar criteria. As stated in the narrative of SR-FICC-2003-03, these criteria may include but are not limited to such things as failure to meet minimum financial requirements, experiencing a significant decrease in equity or net asset value, or a significant loss. This class of members may be placed on the watch list based on credit risk staff's analysis of this information.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible.⁶ The Commission finds that FICC's proposed rule change is consistent with this requirement because it improves FICC's member surveillance process which should better enable FICC to safeguard

the securities and funds which are in its custody or control or for which it is responsible.

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 Section 17A of the Act 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-2004-08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51354; File No. SR-FICC-2004-18]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Clarify Certain Sections of the Loss Allocation Rule of Its Government Securities Division

March 10, 2005.

I. Introduction

On October 1, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on October 27, 2004, amended proposed rule change File No. SR-FICC-2004-18 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposed rule change was published in the **Federal Register** on January 24, 2005.² No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

II. Description

The purpose of this proposed rule change is to clarify certain sections of the loss allocation rule of the Government Securities Division ("GSD") of FICC. If the GSD, upon liquidating a defaulting member's positions, incurs a loss due to the failure

of the defaulting member to fulfill its obligations to the GSD, the GSD looks to the margin collateral deposited by that defaulting member to satisfy the loss. If the defaulting member's margin collateral is insufficient to cover the loss and if there are no other funds available from any applicable cross-margining and/or cross-guaranty arrangements, the GSD would have a "Remaining Loss"³ and would institute its loss allocation process to cover such Remaining Loss. In doing so, the GSD would determine the types of transactions from which the Remaining Loss has arisen (such as direct transactions and member brokered transactions) and would allocate the Remaining Loss as set forth in Sections 8(d)(i) through (v) of Rule 4 of the GSD Rules.

The allocations in Section 8(d)(ii) of Rule 4 to cover a Remaining Loss that is due to member brokered transactions distributes the loss between the affected broker, including repo brokers, and non-broker members that dealt with the defaulting member, are limited as an initial matter. Specifically, a broker netting member will not be subject to an allocation of loss, for any single loss-allocation event in an amount greater than \$5 million, and a non-broker netting member will not be subject to an allocation of loss for any single loss-allocation event in an amount greater than the lesser of \$5 million or five percent of the overall loss amount allocated to non-broker netting members. If the Remaining Loss from member brokered transactions is not covered due to these limitations on allocations, the uncovered loss will be reallocated as set forth in Section 8(e) of Rule 4. This section calls for a pro rata allocation to the netting membership in general based on each netting member's average daily required clearing fund deposit over the twelve-month period immediately prior to the insolvency. The rule change makes clear that the amounts allocated pursuant to Section 8(e) will be assessed to a netting member in addition to any loss amount allocated pursuant to Section 8(d)(ii). Therefore, a netting member may be subject to an aggregate allocation of loss that may exceed the applicable limitation set forth in Section 8(d)(ii).

Even with the allocation pursuant to Section 8(e) of Rule 4, a broker netting member would not be subject to an aggregate loss allocation for any single loss allocation event in an amount greater than \$5 million. In addition, what has been intended, but is not clear in the current rules, is that a non-broker netting member can terminate its GSD

⁷ 17 CFR 200.30-3(a)(12).

¹ U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 51037 (January 13, 2005), 70 FR 3410.

³ GSD Rules, Rule 4, Section 8(d).

⁶ 15 U.S.C. 78q-1(b)(3)(F).

membership and thus cap any additional loss allocation obligation due to the application of Section 8(e) at the amount of its required clearing fund deposit. Therefore, FICC is making its GSD rules clear that any allocations to members resulting from the application of Section 8(e) of Rule 4 or another firm's failure to pay its assessed share are limited to the extent of a member's required clearing fund deposit if such member chooses to terminate its GSD membership.⁴

In addition, FICC is making it clear that the ability to terminate and cap a loss allocation obligation at the amount of the clearing fund deposit is also applicable to a netting member (aside from the defaulting party) where an auction purchase is the reason for any Remaining Loss. In these instances, as in the instances described above, the netting member assessed a loss allocation obligation will have had no participation in the transaction which led to the Remaining Loss and therefore will be allowed to cap its total losses at the amount of the clearing fund deposit.

III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.⁵ The Commission finds that FICC's proposed rule change is consistent with this requirement because clarifying the GSD's rules and procedures with regard to loss allocation assessments to netting members in the event of a default provides enhanced protections to FICC and its members.

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 Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change (File No. SR-FICC-2004-18) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51336; File No. SR-NASD-2005-026]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to TRACE Market Data Fees

March 9, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 11, 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. 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 proposing to amend NASD Rule 7010(k) relating to Transaction Reporting and Compliance Engine ("TRACE") transaction data to: (i) Terminate the Bond Trade Dissemination Service ("BTDS") Internal Usage Authorization Fee and the BTDS External Usage Authorization Fee and, in lieu of both fees, establish a Vendor Real-Time Data Feed Fee; (ii) define the term "Tax Exempt Organization," and amend the defined term "Non-Professional" for purposes of NASD Rule 7010(k)(3); and (iii) make other minor, technical amendments. The text of the proposed rule change is available on NASD's Web site (<http://www.nasd.com>), at NASD's principal office, and at the Commission's Public Reference Room.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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 had 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

NASD seeks to amend NASD Rule 7010(k) to streamline market data services and fees for TRACE transaction data. Specifically, NASD proposes to replace two fees currently charged to receive delayed-time and real-time TRACE transaction data—the BTDS Internal Usage Authorization Fee of \$500 per month per application and the BTDS External Usage Authorization Fee of \$1,000 per month per application—with the Vendor Real-Time Data Feed Fee, a single monthly fee of \$1,500 (subject to certain exceptions) for a feed of real-time TRACE transaction data that the recipient may use in multiple applications. In addition, NASD proposes to amend NASD Rule 7010(k) to define the term "Tax-Exempt Organization" for purposes of identifying the tax-exempt organizations that would qualify to receive a real-time TRACE transaction data feed for a reduced fee of \$400 per month. Also, NASD proposes to amend the defined term "Non-Professional" in NASD Rule 7010(k) to make explicit NASD's current interpretation that a natural person who is a financial professional, or an employee of a financial services entity as specified in the rule, is considered a Non-Professional in those instances where the person accesses the TRACE transaction data to use it solely for personal, non-commercial uses (e.g., a registered associated person of a broker-dealer accesses the free TRACE data at home to obtain information about bonds held in his personal account). Finally, NASD is proposing other minor, technical amendments to NASD Rule 7010(k).

⁴ If a member elects to terminate its membership in FICC, its liability for a loss allocation obligation is limited to the amount of its required clearing fund for the business day on which the notification of such loss allocation is provided to the member.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 15 U.S.C. 78s(b)(2).