

Under the proposed rule change, a violation of a minimum financial requirement by an MBSD clearing participant will 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 which will begin on the day the participant fell below its minimum financial requirement and will continue for ninety calendar days after the later of (i) the member's return to compliance with its applicable minimum financial standards or (ii) FICC's discovery of the violation.<sup>4</sup> In addition, such violation will 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 staff and (2) the placement of such member on FICC's watch list subjecting it to frequent and thorough monitoring. None of these consequences will 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 providing such financial data in a timely manner. In such instances, management contacts the offending member and follows up with a letter.

Failure to receive required information in a timely manner hinders FICC's ability to appropriately assess the financial condition of such members and as a result creates risk to FICC. 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 will subject delinquent participants to a more stringent Participants Fund requirement. Specifically, FICC will now 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 will be applied until appropriate financial data is submitted to FICC and reviewed for compliance purposes. In addition, delinquent members will 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 will also automatically be placed on FICC's watch list and subject to frequent and thorough monitoring.

## 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.<sup>6</sup> The Commission finds that FICC's proposed rule change is consistent with this requirement because it assures the safeguarding of such securities and funds by incentivizing participants to maintain their minimum financial standards and to submit their required financial reports on a timely basis. As a result, FICC's ability to monitor its participants and to maintain a financially sound participant base should be enhanced.

## 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-2004-13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51413; File No. SR-FICC-2004-17]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change To Modify the Assessment Process for Late Submissions of Collateral Made Through the GCF Repo Service and To Increase the Types of Securities Available To Satisfy Collateral Allocation Obligations

March 23, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 13, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on March 14, 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 the Government Securities Division ("GSD") of FICC to modify the assessment process for late submissions of collateral allocations made through its GCF Repo service and to increase the types of securities that can be used by a member in satisfaction of collateral obligations.<sup>2</sup>

#### 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),

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

<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>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The proposed rule change also amends GSD's rules to clarify that where a collateral allocation obligation is satisfied by the posting of U.S. Treasury Bills, notes, or bonds, such securities must mature in a time frame no greater than that of the securities that have been traded except where such traded securities are U.S. Treasury Bills, such obligations must be satisfied with the posting of "comparable securities" and/or cash only.

and (C) below, of the most significant aspects of these statements.<sup>3</sup>

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

1. Assessment Process for Late Submissions of Collateral Allocations Made Through the GCF Repo Service

On October 30, 1998, the Commission granted approval to FICC's predecessor, the Government Securities Clearing Corporation, to implement its GCF Repo service, which is a significant alternative financing vehicle to the delivery versus payment and tri-party repo markets. That approval included a fine schedule for failure to adhere to relevant timeframes.<sup>4</sup> The fine schedule was not implemented because of certain events.<sup>5</sup> More recently, FICC has shifted the service from an interbank service to an intrabank service in order to address certain payment system risk issues that have arisen and that have resulted in decreased volumes.<sup>6</sup> FICC believes, given the lower volumes and likely forthcoming changes to the service to address the payment system risk issues, that the original fine schedule should be replaced.

Specifically, FICC is proposing to implement a late fee schedule to replace the late fine schedule. FICC believes that late fee schedules are appropriate in situations where the member's lateness causes an operational burden but does not result in risk to FICC or its members.<sup>7</sup> In addition, in order to encourage members to make their collateral allocations on a timely basis, there would be one late fee targeted to the most significant timeframe surrounding the service. Specifically, if a dealer does not make the required collateral allocation by the later of 4:30 p.m. (New York time) or 1 hour after the actual close of Fedwire GCF repo reversals, the dealer will be subject to a late fee of \$500.00. Finally, in order to alleviate the potential operational and

administrative burdens caused by late collateral allocations, FICC is proposing to amend the GCF Repo rules to provide that FICC will process collateral allocation obligations that are received after 6 p.m. on a good faith basis only. This 6 p.m. deadline will replace the 7 p.m. final cutoff for dealer allocations of collateral to satisfy obligations.

2. Types of Collateral Used to Satisfy Collateral Allocation Obligations

Currently, GSD Rule 20 provides that a collateral allocation obligation may be satisfied with "comparable securities," Treasury securities, and/or cash. "Comparable securities" are defined to include any securities that are represented by the same generic CUSIP number as the securities in question. Therefore, in the event that a member does not have enough of the collateral securities or the Comparable Securities, the only collateral that can be used is Treasury securities and/or cash.

GSD members have approached FICC and asked that the rules be amended to add additional collateral options as set forth below:

(a) Ginnie Mae adjustable-rate mortgage obligations could be satisfied with Ginnie Mae fixed-rate mortgage backed securities and

(b) Fannie Mae and Freddie Mac adjustable-rate mortgage obligations could be satisfied with: (i) Fannie Mae and Freddie Mac fixed-rate mortgage-backed securities, (ii) Ginnie Mae fixed-rate mortgage-backed securities, and (iii) Ginnie Mae adjustable-rate mortgage obligations.<sup>8</sup>

FICC believes that the proposed rule change is consistent with the requirements of section 17A of the Act<sup>9</sup> and the rules and regulations thereunder applicable to FICC because it is designed to promote the prompt and accurate clearance and settlement of securities transactions by allowing FICC's members additional collateral options with which to meet GCF collateral allocation obligations and by implementing a fee schedule that should incentivize members to allocate collateral on a timely basis.

*(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 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-2004-17 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-2004-17. 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

<sup>3</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>4</sup> Securities Exchange Act Release No. 40623 (October 30, 1998), 63 FR 59831 (November 5, 1998) [File No. SR-GSCC-98-02].

<sup>5</sup> As a new and complex service, members had difficulty adhering to the timeframes. In addition, the initial rate of participation was very poor, and there was a consequent need to encourage growth in the service.

<sup>6</sup> Securities Exchange Act Release No. 48006 (June 10, 2003), 68 FR 35745 (June 16, 2003) [SR-FICC-2003-04].

<sup>7</sup> In a GCF Repo transaction, a borrower does not receive the funds borrowed until it makes the required collateral allocation. The lender maintains control of the funds until the allocation is made. The transaction does not produce a risk of loss to FICC, the lender, or other members.

<sup>8</sup> The industry recognizes fixed-rate securities as an acceptable substitute for adjustable-rate securities as collateral for mortgage-backed repo trades.

<sup>9</sup> 15 U.S.C. 78q-1.

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/gov/gov.docs.jsp?NS-query>. 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-2004-17 and should be submitted on or before April 19, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

J. Lynn Taylor,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51410; File No. SR-ISE-2004-27]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and No. 2 by the International Securities Exchange, Inc., Relating to Trading Options on Reduced Values of the NYSE U.S. 100 Index, the NYSE International 100 Index, the NYSE World Leaders Index, and the NYSE TMT Index, Including Long-Term Options

March 22, 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 July 23, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") 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 the ISE. The ISE submitted Amendments No. 1 and No. 2 to the proposal on January 5, 2005,<sup>3</sup>

and March 1, 2005, respectively.<sup>4</sup> 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

The ISE is proposing to amend its rules to trade options on three broad-based indexes and one narrow-based index, whose components currently trade on the New York Stock Exchange, Inc. ("NYSE"). The NYSE U.S. 100 Index, the NYSE International 100 Index and the NYSE World Leaders Index are all broad-based indexes. The NYSE TMT Index is a narrow-based index. Options on these indexes would be cash-settled and would have European-style exercise provisions.

The text of the proposed rule change is available on the ISE's Web site (<http://www.iseoptions.com>), at the ISE's Office of the Secretary, and at the Commission.

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

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The ISE 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

The Exchange proposes to amend its rules to provide for the listing and trading on the Exchange of cash-settled, European-style, index options on the NYSE U.S. 100 Index, the NYSE International 100 Index, and the NYSE World Leaders Index (the "Broad Based NYSE Indexes") and the NYSE TMT Index (the "Narrow Based NYSE Index") (collectively, the "NYSE Indexes").<sup>5</sup> Specifically, the Exchange

proposes to list options based upon (i) one-tenth of the value of the NYSE Indexes ("Mini Index Options") and (ii) one one-hundredth of the value of the NYSE Indexes ("Micro Index Options"). In Amendment No. 2, which replaced the original filing in its entirety, the ISE proposed a reduced number of contracts for position and exercise limits, addressed one of the events that the Exchange will monitor on an annual basis, and made other technical corrections to the filing.

##### Index Design and Composition

The NYSE Indexes are designed to be a comprehensive representation of the investable United States equity market. Each NYSE Index is a float-adjusted capitalization-weighted index,<sup>6</sup> whose components are all traded on the NYSE.

##### NYSE U.S. 100 Index

The NYSE U.S. 100 Index tracks the top 100 U.S. stocks trading on the NYSE. The companies represented have a market capitalization of \$5.95 trillion, which covers 47% of the entire market capitalization of U.S. companies and over 62% of U.S. companies listed on the NYSE. Additionally, these companies are major market participants, most of which are well-known household names. This fact, along with the NYSE's significant U.S. market penetration, ensures that this index will closely track the entire U.S. market. This index is designed to assist investors looking to track the U.S. market across 10 industry sectors, as defined by Dow Jones & Company ("Dow Jones").

The NYSE U.S. 100 Index is calculated using a rules-based methodology that is fully transparent. Its original selection pool includes all U.S. stocks listed on the NYSE. The entire index universe is ranked in descending order by unadjusted market capitalization. If a component has multiple share classes, the most liquid issue for that company is included. Companies that fail a liquidity test, *i.e.*, average trading volume of 100,000 shares for the preceding three months, are removed. The top 100 companies are then selected from the remaining universe, and the index is weighted by float-adjusted market capitalization.

The index is reviewed quarterly, with an 80-120 buffer applied to limit

<sup>4</sup> Amendment No. 2 replaced the original filing in its entirety, proposed a reduce number of contracts for position and exercise limits, addressed one of the events that the Exchange will monitor on an annual basis, and made other technical corrections to the filing.

<sup>5</sup> A description of each of the NYSE Indexes can be found on the NYSE's Web site at <http://www.nyseindexes.com>.

<sup>6</sup> The calculation of a float-adjusted, market-weighted index involves taking the summation of the product of the price of each stock in the index and the number of shares available to the public for trading, rather than the total shares outstanding for each issue. In contrast, a price-weighted index involves taking the summation of the prices of the stocks in the index.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Amendment No. 1 set forth a list of the underlying components of the NYSE Indexes.