

19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange satisfied the five-day pre-filing requirement. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>12</sup> and designate the proposed rule change to become operative immediately.

The Commission hereby grants that request.<sup>13</sup> The Commission believes that waiving the 30-day operative date is consistent with the protection of investors and the public interest because doing so will allow the Exchange's Fees Schedule and Rules to be consistent with the Commission's guidance on Section 31 without undue delay.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

#### 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-CBOE-2005-38 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-38. 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. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-CBOE-2005-38 and should be submitted on or before July 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Jill M. Peterson,

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51870; File No. SR-DTC-2005-03]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to a Modification of the Fee Structure

June 17, 2005.

#### I. Introduction

On April 26, 2005, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2005-03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on May 13, 2005.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

DTC is a subsidiary of the Depository Trust and Clearing Corporation ("DTCC"). Participants of DTC and their affiliates may from time to time utilize the services of DTCC subsidiaries that are not registered as clearing agencies with the Commission. Such subsidiaries include Global Asset Solutions LLC and DTCC Deriv/Serv LLC. In addition, participants of DTC and their affiliates may utilize the services of other third parties through DTCC. DTC has determined that it would be more efficient and less costly if the fees that participants agree to pay for such services were collected by DTC rather than through independent billing mechanisms that would otherwise have to be established by each subsidiary of DTCC that is not a registered clearing agency and by each third party that is not a registered clearing agency.

The proposed rule change will make clear that DTC may collect from its participants fees and charges of other subsidiaries of DTCC and of other third party service providers. DTC will enter into appropriate agreements with such subsidiaries and other third party service providers regarding DTC's collection of fees. Furthermore, the rule change makes clear that as a part of its collecting fees and charges for services provided to its participants, DTC may similarly collect fees and charges for services provided to affiliates of its participants.

#### III. Discussion

Section 17A(a)(1)(B) of the Act provides that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.<sup>3</sup> Although the services provided by unregulated DTCC subsidiaries and by other third parties are not core clearance and settlement services, they are related to the clearance and settlement operations of DTC and of its participants. By streamlining the fee collection process for these services so that DTC's participants will pay these fees to DTC as a part of their normal monthly DTC bills, the proposed rule change should help to improve efficiency in the operations of DTC participants and thereby should remove unnecessary cost for DTC participants and for the persons (*i.e.*, the DTCC subsidiaries and the other entities providing services to DTC participants) facilitating transactions by and acting on behalf of investors. Accordingly, the Commission finds that

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 C.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 51675, (May 9, 2005), 70 FR 25630.

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

the proposed rule change is consistent with the requirements of Section 17A of the Act.

#### 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-DTC-2005-03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-3283 Filed 6-23-05; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51875; File No. SR-FICC-2005-01]

#### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change Relating to Timely Notification of Significant Events That Effect a Change in Control of a Member or Could Have a Substantial Impact on a Member's Business or Financial Condition

June 17, 2005.

On January 6, 2005, 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> and on May 13, 2005, amended the proposed rule change.<sup>2</sup> Notice of the proposal was published in the *Federal Register* on May 10, 2005.<sup>3</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 require certain FICC members to notify FICC when they experience an event that

would effect a change in control of such member or could have a substantial impact on such member's business or financial condition. Under the rule change, GSD netting members and MBSD participants will be required to notify FICC upon experiencing a "reportable event." The term "reportable event" is defined as an event that would effect a change in control of a GSD netting member or an MBSD participant or an event that could have a substantial impact on a netting member's/participant's business or financial condition including, but not limited to: (a) Material organizational changes including mergers, acquisitions, changes in corporate form, name changes, changes in the ownership of a netting member/participant or its affiliates, and material changes in management; (b) material changes in business lines, including new business lines undertaken; and (c) status as a defendant in litigation which could reasonably impact the netting member's/participant's financial condition or ability to conduct business.<sup>4</sup>

In order to provide FICC with enough time to analyze the implications of a "reportable event" and to determine an appropriate course of action, a netting member/participant must submit written notice to FICC at least 90 calendar days prior to the effective date of such "reportable event" unless the netting member/participant demonstrates that it could not have reasonably done so and also has provided oral and written notice to FICC as soon as possible. Failure to so notify FICC will result in a \$5,000 fine.

#### II. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing be designed to assure the safeguarding of securities and funds which are in its custody or control.<sup>5</sup> The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it should enhance FICC's ability to collect and evaluate in a timely manner the type of information that it needs in order to properly manage risks and thereby to better safeguard the securities and funds for which it is in control.

#### 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>6</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-2005-01) be, and hereby is, approved.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-3281 Filed 6-23-05; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51865; File No. SR-FICC-2005-11]

#### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Institute a Netting Process for Fail Deliver and Fail Receive Obligations for Netting Members in Its Government Securities Division

June 17, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 19, 2005, 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 rules of FICC's Government Securities Division ("GSD") to institute a process to net netting members' fail deliver and fail receive obligations with their current settlement obligations on a daily 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

<sup>4</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Republication of the notice is not required because the amendment to the proposed rule change merely renumbered certain proposed and existing sections of the rule text that were included in the original filing.

<sup>3</sup> Securities Exchange Act Release No. 51643 (May 2, 2005); 70 FR 24665.

<sup>4</sup> A similar requirement was added as Addendum T to the National Securities Clearing Corporation's Rules in 1998. Securities Exchange Act Release No. 40582 (Oct. 20, 1998), 63 FR 57346 (Oct. 27, 1998).

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>6</sup> 15 U.S.C. 78q-1.

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

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