

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.⁴

Jill M. Peterson,

Assistant Secretary.

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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")¹ and on May 13, 2005, amended the proposed rule change.² Notice of the proposal was published in the *Federal Register* on May 10, 2005.³ 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.⁴

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.⁵ 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 Act⁶ 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.⁷

Jill M. Peterson,

Assistant Secretary.

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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"),¹ 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

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 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.

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

⁴ 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).

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 15 U.S.C. 78q-1.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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.²

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

The rules of the GSD provide that FICC may, in its sole discretion, net a netting member's fail deliver and fail receive obligations with the member's current settlement obligations. FICC is proposing to amend the GSD's rules to institute this fail netting process on a daily basis.

Since the implementation of the GSD's netting system (by FICC's predecessor, the Government Securities Clearing Corporation), outstanding fails have been processed separately from new trading activity. Demand by members for the netting of fails was initially low due to the fact that many members could not properly account for netted fails in their proprietary systems. In addition, demand for netting of fails remained low until the summer of 2003 when the market experienced significant fails in the Treasury 10-year note due May 2013.

In recent years, FICC has been integrally involved in assisting the industry in addressing significant fail situations. On several occasions, FICC intervened by supporting special netting of fails with members' current settlement activity. While this procedure helped alleviate the number of open fails and associated settlement issues and risks, it was only an intermediate step in resolving the need for the more regular fail processing proposed herein. Moreover, the industry's continued experience with fails has caused a heightened demand on the part of members for the GSD to institute such a process.

Pursuant to the proposed rule change, the GSD would implement a methodology whereby outstanding member fail obligations will be netted with current settlement activity. This process will provide reduced risk exposure to members because it will facilitate settlement by allowing members to close open fails on their books on a daily basis, as well as reduce the number of outstanding clearance obligations at FICC.

FICC does not anticipate an undue burden on members as a result of this proposal. The GSD has issued an Important Notice³ to all members seeking feedback on the proposed change, and to date, the substance of any feedback received has been positive.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁴ and the rules and regulations thereunder applicable to FICC because it allows FICC to reduce the risks posed by large numbers of open fail positions. As such, the proposed rule facilitates the prompt and accurate clearance and settlement of securities transactions and assures the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible.

(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.

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. Please include File Number SR-FICC-2005-11 in the subject line.

Paper Comments

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

All submissions should refer to File Number SR-FICC-2005-11. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site, 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-2005-11 and should be submitted on or before July 15, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Jill M. Peterson,

Assistant Secretary.

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² The Commission has modified the text of the summaries prepared by FICC.

³ Important Notice GOV028.05 (March 10, 2005).

⁴ 15 U.S.C. 78q-1.

⁵ 17 CFR 200.30-3(a)(12).