

and lending and extending credit to other nonutility money pool participants.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52124; File No. SR-FICC-2005-09]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Collecting of Fees for Services Provided by Other Entities

July 26, 2005.

#### I. Introduction

On May 3, 2005, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2005-09 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 June 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

The proposed rule change amends FICC's rules to allow FICC to collect fees for services provided by unregulated subsidiaries of The Depository Trust and Clearing Corporation ("DTCC" and by other entities. FICC is a subsidiary of DTCC. Members of FICC 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, members of FICC and their affiliates may utilize the services of other third parties. FICC has determined that it would be more efficient and less costly if the fees that members agree to pay for such services were collected by FICC rather than through independent billing mechanisms that would otherwise have to be established by each subsidiary of

DTCC and third party that is not a registered clearing agency.

FICC's rules currently allow for fee collection arrangements with respect to collection of fees from members. The proposed rule change further clarifies this practice and facilitates collection of fees with respect to affiliates of members.<sup>3</sup> FICC will enter into appropriate agreements with such subsidiaries and others regarding the collection of fees.

#### 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>4</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 FICC and of its members. By streamlining the fee collection process for these services so that FICC's members will pay these fees to FICC as a part of their normal monthly FICC bills, the proposed rule change should help to improve efficiency in the operations of FICC members and thereby should remove unnecessary cost for FICC members and for the persons (*i.e.*, the DTCC subsidiaries and the other entities providing services to FICC members) facilitating transactions by and acting on behalf of investors. Accordingly, the Commission finds that 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-FICC-2005-09) be and hereby is approved.

<sup>3</sup> FICC currently has such fee collection arrangements with The Bond Market Association ("TBMA") pursuant to specific rules provisions. FICC continues to collect fees on behalf of TBMA; however, pursuant to this filing, the existing rules provisions which govern the TBMA arrangement will be replaced with broader language intended to cover all such fee collection arrangements entered into by FICC.

<sup>4</sup> 15 U.S.C. 78q-1(a)(A)(B).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52133; File No. SR-NASD-2005-068]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Regarding a New Order Type for the Pre-Market Trading Session

July 27, 2005.

On May 25, 2005, the National Association of Securities Dealers, Inc., through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Rule 19b-4 thereunder,<sup>2</sup> to establish a new order type for Nasdaq-listed securities called the Total Good-till-Canceled order, which would be eligible for execution during the pre-market trading session and would be processed precisely as the Good-till-Canceled order. The proposed rule change was published for comment in the **Federal Register** on June 23, 2005.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,<sup>4</sup> the requirements of Section 15A of the Act,<sup>5</sup> in general, and Section 15A(b)(6) of the Act,<sup>6</sup> in particular, which requires, among other things, that the rules of a national securities association be designed to facilitate transactions in securities and to remove impediments to and perfect the mechanism of a free and open

<sup>5</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> See Securities Exchange Act Release No. 51859 (June 16, 2005), 70 FR 36428.

<sup>4</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78o-3.

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

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

<sup>2</sup> Securities Exchange Act Release No. 51789, (June 6, 2005), 70 FR 34169.