

administration of their affairs, respectively.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC, FICC, and NSCC do 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. DTC, FICC, and NSCC will notify the Commission of any written comments they receive.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(C).<sup>6</sup> Section 17A(b)(3)(C) requires that the rules of a clearing agency be designed to assure fair representation in the selection of its directors and in the administration of its affairs. The Commission finds that DTC, FICC, and NSCC's proposed rule changes are consistent with this requirement because the allocation of common share purchase requirements will more accurately represent the actual use of the clearing agencies' services and the risks posed by such uses. Moreover, the removal of non-U.S. CSDs from the definition of Mandatory Purchaser Participant should not result in a significant increase in the burden imposed on the remaining shareholders, because the common shares that would otherwise be purchased by the non-U.S. CSDs represent slightly more than one percent of the total number of DTCC common shares to be purchased by the Mandatory Purchaser Participants.

DTC, FICC, and NSCC have requested that the Commission approve the proposed rules prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will permit DTCC to complete the necessary calculations to determine the number of shares to be purchased by Mandatory Purchaser Participants without including the non-U.S. CSDs, and will permit the clearing agencies' participants to complete their purchases

of such shares prior to DTCC, DTC, FICC, and NSCC's annual shareholders meetings to be held in April 2006.

**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 Numbers SR-DTC-2006-04, SR-FICC-2006-01, and SR-NSCC-2006-01 in the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Numbers SR-DTC-2006-04, SR-FICC-2006-01, and SR-NSCC-2006-01. 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 offices of DTC, FICC, and NSCC and on DTC's Web site at <http://www.dtc.org>, and on FICC's Web site at <http://www.ficc.com>, and on NSCC's Web site, <http://www.nsc.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 Numbers SR-DTC-2006-04, SR-FICC-

2006-01, and SR-NSCC-2006-01 and should be submitted on or before March 29, 2006.

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

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E6-3269 Filed 3-7-06; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53396; File No. SR-FICC-2005-17]

**Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Assumption of Blind Brokered Fails by Its Government Securities Division**

March 2, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 30, 2005, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change and on November 28, 2005 amended the proposed rule change that is 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 proposed rule change would clarify the practice of the Government Securities Division ("GSD") of FICC of assuming certain blind brokered repurchase transaction ("repo") fails and of obtaining financing in connection with such assumption.

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

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

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

and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

The purpose of the proposed rule change is to clarify the practice of the GSD of FICC of assuming certain blind brokered repo fails and of obtaining financing as necessary in connection with such assumption. The settlement of the start leg of a same-day starting repo has always been and continues to be processed outside of the GSD. In the evening of the day of a same-day starting brokered repo, FICC will assume responsibility from the broker for settlement of such start leg if the repo dealer has not delivered securities to the broker to start the repo (*i.e.*, the start leg has failed). This may involve the receipt of securities from the repo dealer for redelivery to the reverse repo dealer or the settlement of the start leg may be effected by netting or pair-off of the settlement obligations arising from the start leg against the settlement obligations arising from the close leg of the same or another repo.

FICC will also assume a blind brokered repo fail that arises in the close leg of a blind brokered repo transaction. For example, if the start leg of the transaction settles outside of FICC in the normal course but one side of the close leg does not compare (for any reason that would cause a trade to not compare such as erroneous trade data submitted by one or both of the parties), the broker will wind up with a net settlement position rather than netting flat. If that transaction fails to settle, FICC will assume the broker's fail.

FICC assumes the fails in these instances in order to decrease risk.<sup>3</sup> By assuming the fail, FICC removes the broker, which acts as an intermediary and which expects to net out of every transaction and not have a settlement position, from the settlement process. FICC is proposing to add a provision to its rules to expressly provide for this practice and therefore to make its rules consistent with its current and longstanding practice.<sup>4</sup>

In the assumption of such broker fails, the need for financing might arise. For example, such as if the repo dealer delivered securities at the close of the securities Fedwire and if the broker was

unable to deliver them to the reverse repo dealer. The GSD's rules already contain a provision, Section 8 of Rule 12, that addresses the GSD's need to obtain financing in general. This provision contemplates the need for financing in order to allow the GSD to facilitate securities settlement generally. It is important to note that such financing is part of the GSD's normal course of business, and the GSD's ability to obtain such financing is necessary for it to be able to complete securities settlement. Section 8 of Rule 12 provides that if FICC deems it appropriate to obtain financing to provide its securities settlement services, FICC may create security interests in eligible netting securities delivered by a netting member in order to obtain such financing. The provision requires that members not take any action to adversely affect this process. The provision also states that such security interests may be created to obtain financing in an amount greater than the obligation of a member to FICC relating to such eligible netting securities. Thus, clearing fund securities may be used to collateralize such financing. Also, Section III.C of the GSD's fee structure provides the formula that the GSD will use to charge members for the cost of any financing obtained by the GSD.

FICC wishes to interpret Section 8 of Rule 12 and Section III.C. to apply to financing that might arise because of FICC's assumption of blind brokered fails. FICC does not believe that actual changes to the rules are necessary for this clarification.

FICC believes that the proposed change is consistent with Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to FICC because it clarifies FICC's rules for consistency with current practice and provides an interpretation of an existing rule.

*(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-2005-17 in the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FICC-2005-17. 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 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

<sup>2</sup>The Commission has modified the text of the summaries prepared by FICC.

<sup>3</sup>FICC has engaged in the practice of assuming broker fails since the inception of its blind brokered repo service.

<sup>4</sup>The specific rule being added is Rule 19, Section 5, "Assumption of Blind Brokered Fails."

<sup>5</sup>15 U.S.C. 78q-1.

copying at the principal office of FICC and on FICC's Web site, <http://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-2005-17 and should be submitted on or before March 29, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Nancy M. Morris,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53394; File No. SR-PCX-2006-07]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Open Order Modifiers

March 1, 2006.

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 February 1, 2006, the Pacific Exchange, Inc. ("PCX" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by PCX. PCX filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> which renders it effective upon filing with the Commission. On February 28, 2006, PCX filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX, through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equity trading facility of PCXE, to

add GTC and GTD modifiers for use on the Exchange and to specify the method in which GTC and GTD Orders will be adjusted in the event of a corporate action. The text of the proposed rule change is below. Additions are *italicized*; deletions are in [brackets].

#### Rules of PCX Equities, Inc.

##### Rule 7

##### Equities Trading

\* \* \* \* \*

##### Rule 7.31 Orders and Modifiers

(a)-(b) No change.

(c) *Time in Force*

(1) Day Order. An order to buy or sell which, if not executed, expires at the end of the day on which it was entered.

(2) *Good Till Cancelled ("GTC")*

*Order. An order to buy or sell (or unexecuted portion thereof) which, if not executed, remains in effect until executed, cancelled by the entering party, or expiration, whichever comes first. All unexecuted portions of GTC Orders will be cancelled by the Corporation one year after initial entry.*

(3) *Good Till Date ("GTD") Order. An order to buy or sell (or unexecuted portion thereof) set to expire following the close of the core session of the pre-determined date specified by the entering party which, if not executed, remains in effect until executed, cancelled by the entering party, or expiration, whichever comes first. All unexecuted portions of GTD Orders will be cancelled by the Corporation one year after initial entry.*

\* \* \* \* \*

##### Rule 7.39 [Reserved] Adjustment of Open Orders

*The Archipelago Exchange will automatically adjust the price and/or size of round and odd lot Open Orders, as defined in PCXE Rule 7.31, in all ArcaEx eligible securities (unless instructed otherwise by the entering party) resident in the system in response to issuer corporate actions (i.e., dividend payment or distribution, stock split, mergers and acquisitions), as follows:*

(a) *Sell Orders—Sell Orders in the system shall not be adjusted by the Corporate Action Processing ("CAP") System and must be modified, if desired, by the entering party, except for reverse splits where such sell side orders shall be purged from the system.*

(b) *Buy Orders—Buy side orders shall be adjusted by the CAP System based on the particular corporate action impacting the security as set forth below:*

(1) *Cash Dividends: Buy side order prices shall be first reduced by the*

*dividend amount and the resulting price will be rounded to the nearest penny.*

(2) *Stock Dividends and Stock Splits: Buy side order prices shall be determined by first rounding up the dollar value of the stock dividend or split to the nearest penny. The resulting amount shall then be subtracted from the price of the buy order. The size of the order shall be adjusted by first (A) multiplying the size of the original order by the numerator of the ratio of the dividend split, then (B) dividing that result by the denominator of the ratio of the dividend split, then (C) rounding that result to the next lowest share.*

(3) *Dividends Payable in Either Cash or Securities at the Option of the Stockholder: Buy side order prices shall be reduced by the dollar value of either the cash or securities, whichever is greater. The dollar value of the cash shall be determined using the formula in paragraph (1) above, while the dollar value of the securities shall be determined using the formula in paragraph (2) above. If the stockholder opts to receive securities, the size of the order shall be increased pursuant to the formula in subparagraph (2) above.*

(4) *Combined Cash and Stock Dividends/Split: In the case of a combined cash dividend and stock split/dividend, the cash dividend portion shall be calculated first as per section (1) above, and stock portion thereafter pursuant to sections (2) and/or (3) above.*

(5) *Reverse Splits: All orders (buy and sell) shall be cancelled and returned to the entering party.*

(c) *Stop Orders To Sell—Sell Stop Orders will be handled in the same manner as Buy Orders as mentioned in section (b) in the event of a corporate action.*

(d) *Open Orders that are adjusted by the CAP System pursuant to the above rules, and that thereafter continuously remain in the system, shall retain the time priority of their original entry.*

(e) *In the event a corporate action is identified by the Corporation at a time in which an adjustment to all affected open buy orders and sell stop orders could not be made, the Corporation will cancel all such orders and notify the entering party(ies).*

\* \* \* \* \*

#### 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the

<sup>6</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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> Amendment No. 1 replaced and superseded the original filing in its entirety.