

appear to present any novel regulatory issues. In addition, waiving the 30-day operative delay ensures that the Exchange's obvious error rule conforms to the Options Intermarket Linkage Plan without delay. Therefore, the Commission designates the proposal operative upon filing.²²

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. Please include File Number SR-NYSEArca-2008-41 on 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-NYSEArca-2008-41. 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 Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-NYSEArca-2008-41 and should be submitted on or before May 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Release No. 34-57652; File No. SR-FICC-2007-08]

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Order Approving Proposed Rule Change as Amended To Resume Interbank Clearing for the GCF Repo Service

April 11, 2008.

I. Introduction

On July 11, 2007, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2007-08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ On August 28, 2007, the Commission published notice of the proposed rule change to solicit comments from interested parties.² On January 22, 2008, FICC amended the proposed rule change. On February 12, 2008, the Commission published notice of the amended proposed rule change to solicit comments from interested parties.³ The Commission received no comment letters in response to the proposed rule change as originally filed or as amended. For the reasons discussed

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 56303 (August 22, 2007), 72 FR 49339.

³ Securities Exchange Act Release No. 57281 (February 6, 2008), 73 FR 8081.

below, the Commission is approving the proposed rule change.

II. Description

1. Background

The GCF Repo service allows FICC Government Securities Division ("GSD") dealer members to trade GCF Repos throughout the day with inter-dealer broker netting members ("brokers") on a blind basis without requiring intraday, trade-for-trade settlement on a delivery-versus-payment ("DVP") basis. Standardized, generic CUSIP numbers have been established exclusively for GCF Repo processing and are used to specify the acceptable type of underlying Fedwire book-entry eligible collateral, which includes Treasuries, Agencies, and certain mortgage-backed securities.

The GCF Repo service was developed as part of a collaborative effort among FICC's predecessor, the Government Securities Clearing Corporation ("GSCC"), its two clearing banks, The Bank of New York ("BNY") and The Chase Manhattan Bank, now JP Morgan Chase Bank, National Association ("Chase"), and industry representatives.⁴ GSCC introduced the GCF Repo service on an intraclearing bank basis in 1998.⁵ Under the intrabank service, dealer members could only engage in GCF Repo transactions with other dealers that cleared at the same clearing bank.

In 1999, GSCC expanded the GCF Repo service to permit dealer members to engage in GCF Repo trading on an interclearing bank basis, which allowed dealers using different clearing banks to enter into GCF Repo transactions on a blind brokered basis.⁶ Because dealer members that participated in the GCF Repo service did not, and still do not, all clear at the same clearing bank, expanding the service to an interclearing bank basis necessitated the establishment of a mechanism to permit after-hours movements of securities between the two clearing banks to address the situation where GSCC had an unbalanced net GCF securities positions and unbalanced net cash positions at each clearing bank at the end of each day. (In other words, where

⁴ BNY and Chase remain the two clearing banks approved by FICC to provide GCF Repo settlement services. In the future, other banks that FICC in its sole discretion determines meet its requirements may be approved to provide GCF Repo settlement services.

⁵ Securities Exchange Act Release No. 40623 (October 30, 1998), 63 FR 59831 (November 5, 1998) (SR-GSCC-98-02).

⁶ Securities Exchange Act Release No. 41303 (April 16, 1999), 64 FR 20346 (April 26, 1999) (SR-GSCC-99-01).

²² For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

at the end of GCF Repo processing each business day, the dealers at one clearing bank would be net funds borrowers while the dealers at the other clearing bank would be net funds lenders). To address this issue, GSCC and its clearing banks established a legal mechanism by which securities would “move” across the clearing banks without the use of the securities Fedwire.⁷ At the end of the day after the GCF Repo net results were produced, securities were pledged using a tri-party-like mechanism, and the interbank cash component was moved through the cash Fedwire. In the morning, the pledges were unwound with the funds being returned to the net funds lenders and the securities being returned to the net funds borrowers.

However, as use of the service increased, certain payment systems risk issues arose in connection to the interbank funds settlements. In 2003, FICC shifted the service back to an intrabank status to enable it to study the risk issues presented and to devise a satisfactory solution to those issues in order that it could bring the service back to interbank status.⁸

2. Proposal

FICC is now seeking to return the GCF Repo service to an interbank status. FICC will address the risk issues raised by the interbank funds movement by placing a security interest on a dealer’s “net free equity” (“NFE”) at its clearing bank to collateralize its GCF Repo cash obligation to FICC on an intraday basis and by making changes with respect to the morning “unwind” period.⁹ No changes are being made with respect to the procedures used for after-hours movement of securities, which procedures were used when the interbank service was first introduced.

Specifically, the interbank funds payment will not move during the GCF Repo morning unwind process. In lieu of making funds payments, each interbank dealer (“Interbank Pledging Member”) at the GCF net funds borrower bank will grant to FICC a security interest in its NFE-Related Collateral in an amount equal to its pro rata share of the total interbank funds

debit (“Prorated Interbank Cash Amount”).¹⁰ FICC’s lien on this collateral will be *pari passu* to any lien created by the dealer in favor of the relevant GCF clearing bank.

FICC will in turn grant to the GCF net funds lender bank, which was due to receive funds, a security interest in the NFE-Related Collateral to support the debit in FICC’s account at the net funds lender bank. The debit in FICC’s account (“Interbank Cash Amount Debit”) is the amount of the funds the lending dealers are due to receive in the morning as a prerequisite to their release of GCF collateral. The clearing banks will agree to manage the collateral value of the NFE-Related Collateral as they do today.

The debit in the FICC account at the GCF net funds lender bank will be satisfied during the end of day GCF settlement process. Specifically, that day’s new activity will yield a new interbank funds amount to move at end of day; however, this new interbank funds amount will be netted with the amount that was due in the morning to reduce the interbank funds movement. The NFE security interest will be released when the interbank funds movement is made at end of day.

As described above, FICC will have a security interest in the dealers’ NFE-Related Collateral on an intraday basis. In the unlikely event of an intraday GCF Repo participant default, FICC will need to have the NFE-Related Collateral liquidated in order to have use of the proceeds. FICC will enter into an agreement with each of the clearing banks whereby each bank will agree to liquidate the NFE-Related Collateral both for itself as well as on behalf of FICC. FICC and each bank will agree to share pro rata in the liquidation proceeds.

Due to the nature of the various assets that may be part of a particular dealer’s NFE-Related Collateral and market conditions, liquidation of the NFE-Related Collateral might take longer than one day, which is GSD’s typical collateral liquidation time frame, to be completed. Therefore, FICC will establish standby liquidity facilities or other financing arrangements with each of the clearing banks to be invoked as needed in the event of the default of an interbank pledging member and the subsequent liquidation of its NFE-Related Collateral.

FICC will impose a collateral premium (“GCF Premium Charge”) on the GCF Repo portion of the Clearing Fund deposits of all GCF Repo

participants to further protect FICC in the event of an intraday default of a GCF Repo participant. FICC will require GCF Repo participants to submit a quarterly “snapshot” of their holdings by asset type to enable FICC Risk Management staff to determine the appropriate Clearing Fund premium. Any GCF Repo participant that does not submit this required information by the deadlines established by FICC will be subject to a fine and an increased GCF Premium Charge.

Because the NFE-Related Collateral is held at the clearing banks and because the clearing banks monitor the activity of their dealer customers, FICC will have the right, using its sole discretion, to cease to act for a member that is a GCF Repo participant in the event that a clearing bank ceases to extend credit to such member.

The proposal results in the need for the following specific GSD rule changes.

1. The new terms referred to above (GCF Premium Charge, Interbank Cash Amount Debit, Interbank Pledging Member, NFE-Related Collateral, and Prorated Interbank Cash Amount) will be added to Rule 1 (Definitions). A new term, “NFE-Related Account,” which is referred to in the definition of “NFE-Related Collateral,” will also be added.

2. Section 3 (Collateral Allocation) of Rule 20 (Special Provisions for GCF Repo Transactions), which governs the GCF Repo collateral allocation process, will be amended to reflect the new process that will occur on the morning of the unwind (to be referred to as the morning of “Day 2” in the Rules).

3. Section 3 of Rule 20 will be further amended to provide for the following:

(a) The granting of the security interest in the NFE-Related Collateral to FICC by the dealers;

(b) The granting of authority for FICC to provide instructions to the clearing banks regarding the NFE-Related Collateral of the dealers;

(c) The granting of the security interest in the NFE-Related Collateral to the clearing banks by FICC; and

(d) FICC’s right to enter into agreements with the clearing banks regarding the collateral management of the NFE-Related Collateral, the liquidation of the NFE-Related Collateral, and the standby liquidity facilities or other financing arrangements.

4. Rule 4 (Clearing Fund, Watch List, and Loss Allocation) will be amended to provide for the GCF Premium Charge that will be imposed on GCF Repo participants. Rule 3 (Ongoing Membership Requirements) will be amended to include the quarterly NFE reporting requirement which, if not

⁷ Movements of cash did not present the same need because the cash Fedwire is open later than the securities Fedwire.

⁸ Securities Exchange Act Release No. 48006 (June 10, 2003), 68 FR 35745 (June 16, 2003) (SR-FICC-2003-04).

⁹ NFE is a methodology that clearing banks use to determine whether an account holder, such as a dealer, has sufficient collateral to enter a specific transaction. NFE allows the clearing bank to place a limit on its customer’s activity by calculating the value of the account holder’s balances at the bank. Account holders have the ability to monitor their NFE balance throughout the day.

¹⁰ “NFE-Related Collateral” is the total amount of collateral that a dealer has at its clearing bank.

followed timely by the members, will result in fines and GCF Premium Charge.

5. Rules 21 (Restrictions on Access to Services) and 22 (Insolvency of a Member) will be amended to provide that FICC may in its sole discretion cease to act for a member in the event that the member's clearing bank has ceased to extend credit to the member.

6. The schedule of GCF time frames will be amended to reflect technical changes.

III. The Amendment

The amendment to the proposed rule change addresses the situation where FICC becomes concerned about the volume of interbank GCF Repo activity. For example, such a concern might arise if market events were to cause dealers to turn to the GCF Repo service for funding above normal levels. In order to protect itself and its members, FICC believes it is important to have the discretion to institute risk mitigation and appropriate disincentive measures in order to bring GCF Repo levels down to a level which it believes to be prudent from a risk management perspective.

Specifically, the amendment introduces the term "GCF Repo Event," which will be declared by FICC if either of the following occurs: (1) The GCF interbank funds amount exceeds five times the average interbank funds amount over the previous ninety days for three consecutive days¹¹ or (2) the GCF interbank funds amount exceeds fifty percent of the amount of GCF Repo collateral pledged for three consecutive days.¹² FICC will review the Repo Event triggering levels on a semi-annual basis to determine whether they remain adequate.¹³ FICC will also have the right to declare a GCF Repo Event in any other circumstances where in its sole discretion it is concerned about GCF Repo volumes and believes it is necessary to declare a Repo Event in order to protect itself and its members.¹⁴

¹¹ For example, assume that the average interbank funds amount over the previous ninety days is \$11 billion. FICC would declare a GCF Repo Event if the interbank funds amount exceeds \$55 billion over three consecutive days.

¹² For example, assume that on Monday the total amount of GCF Repo collateral pledged was \$86.8 billion and that the interbank funds amount was \$11 billion. The interbank funds amount is 12.7 percent of the daily pledged amount. FICC would declare a GCF Repo Event if the overall pledged amount stayed at \$86.6 billion and if the interbank amount exceeded \$43.3 billion for three consecutive days.

¹³ To change the Repo Event triggering levels, FICC is required to submit a proposed rule change to the Commission.

¹⁴ For example, FICC may determine it is prudent to declare a GCF Repo Event if one of the specified

The declaration of a GCF Repo Event will trigger the imposition of risk mitigation and disincentive measures. These measures will be imposed each day during the GCF Repo Event, and they will be imposed on each day's GCF net funds borrowers whose aggregate GCF net short position exceeds a certain threshold.¹⁵

Specifically, FICC will establish a "GCF Repo Event Parameter," which will be a certain percentage of each dealer's average GCF Repo net short settlement amount during a one-month look-back period. FICC is establishing 140 percent as the maximum percentage for the GCF Repo Event Parameter, and FICC will have the discretion to reduce this percentage during a GCF Repo Event if it believes in its sole discretion that the maximum percentage is not adequately addressing the particular event. Any GCF Repo net short settlement amount that exceeds the GCF Repo Event Parameter will be subject to a "GCF Repo Event Clearing Fund Premium" and a "GCF Repo Event Carry Charge."

FICC will set 12% as the minimum percentage on which the GCF Repo Event Clearing Fund Premium will be based and 50 basis points as the minimum on which the GCF Repo Event Carry Charge will be based.¹⁶ FICC will have the discretion to increase these amounts during a GCF Repo Event if FICC believes in its sole discretion that the minimums are not adequately addressing the particular GCF Repo Event.

FICC will retain the right to waive imposition of the GCF Repo Event Clearing Fund Premium and the GCF Repo Event Carry Charge if FICC determines, in its sole discretion based

events noted above occurs for less than three consecutive days.

¹⁵ FICC will inform its members about the declaration of a GCF Repo Event by issuing an Important Notice. The Important Notice will, among other things, inform members of the implementation date of the measures. FICC will also inform the Commission about the declaration of the Event. The GCF Repo Event will last until FICC notifies its members that the Event has ended.

¹⁶ For example, assume that FICC has declared a GCF Repo Event, and on the day of implementation of the protective measures, Dealer A's average net short settlement amount is \$1 billion. This means that Dealer A's GCF Repo Event Parameter is \$1.4 billion. On the day of implementation of the protective measures, Dealer A's net settlement amount is \$1.9 billion, so the measures will be applied to \$500 million (*i.e.*, \$1.9 billion minus \$1.4 billion). If the percentage for the GCF Repo Event Collateral Premium is 12 percent and the GCF Repo Event Carry Charge is 50 basis points, Dealer A will pay a GCF Repo Event Clearing Fund Premium of \$60 million and a GCF Repo Event Carry Charge of \$6,944.44 on the day of implementation. On each succeeding day that the GCF Repo Event remains in effect, FICC will reevaluate Dealer A's net settlement position.

on monitoring against the GCF Repo Event Parameters, that these measures are not necessary to protect FICC and its members.

IV. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.¹⁷ The Commission believes that FICC's proposed rule change is consistent with this Section because it should facilitate the prompt and accurate clearance and settlement of securities by allowing GCF Repo participants to expand their use of the GCF Repo service to include GCF Repos done with dealers that clear at a different clearing bank. The Commission also believes that FICC's proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) because FICC has designed the interclearing bank procedures, including the risk monitoring and risk mitigation measures, in such a way that they should help assure the safeguarding of securities and funds which are in the custody or control of FICC or for which FICC is responsible.

V. 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. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation.¹⁸

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-FICC-2007-08), as amended, be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon,

Deputy Secretary.

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¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

¹⁸ 15 U.S.C. 78c(f).

¹⁹ 17 CFR 200.30-3(a)(12).