IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR–FINRA 2009–006 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–FINRA–2009–006. 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 changes 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 FINRA. 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 No. SR–FINRA–2009–006 and should be submitted on or before March 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4961 Filed 3–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59490; File No. SR–FINRA–2009–007]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Incorporated NYSE Rules 12 (''Business Day'') and 282 (Buy-in Procedures) and To Delete Incorporated NYSE Rule 177 (Delivery Time—''Cash'' Contracts) Relating to the Elimination of NYSE Members' Ability To Enter Orders on the NYSE With Settlement Instructions of ''Cash,'' ''Next Day'' and ''Seller's Option''

March 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 20, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend Incorporated NYSE Rules 12 (''Business Day'') and 282 (Buy-in Procedures), and to delete Incorporated NYSE Rule 177 (Delivery Time—''Cash'' Contracts) [4] to conform to the proposed rule change by the New York Stock Exchange, LLC (''NYSE'') to its versions of Rules 12, 177 and 282.[5]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

FINRA is proposing changes to Incorporated NYSE Rules 12,[6] 177 [7] and 282 [8] to conform these rules to recent amendments made by NYSE. The NYSE's amendments remove references to certain settlement instructions that are no longer compatible with the NYSE's electronic market. These include instructions to settle on ''cash,'' ''next day'' or ''seller's option'' basis.

As described by the NYSE in its filing,[9] in the NYSE's current environment, orders received by NYSE systems that are marketable upon entry are eligible to be immediately and automatically executed. According to the NYSE, order types and settlement instructions that require manual intervention pose significant

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See* Securities Exchange Act Rel. No. 59446 (February 25, 2009) (File No. SR–NYSE–2009–17).

[6] Incorporated NYSE Rule 12 defines the term ''business day.''

[7] Incorporated NYSE Rule 177 states the delivery time for ''cash'' contracts.

[8] Incorporated NYSE Rule 282 sets forth buy-in procedures.

[9] *See supra* note 3 [sic]. The Commission notes that the correct cross-reference is to note 5.

impediments to the efficient functioning of the NYSE's market. In addition, the NYSE states that the ability to have market participants' orders executed in the most efficient manner necessitates the elimination of cash, next day and seller's option as valid settlement instructions for orders submitted to the NYSE. It adds that because these instructions result in the orders printing to paper, the manual intervention required in the processing of these orders puts the orders at the very real risk of ''missing the market'' as a result of the current speed of order execution in the NYSE market. Under the NYSE filing, references to cash, next day and seller's option were deleted from NYSE Rules 12 (''Business Day'') and 282 (Buy-in Procedures) as valid settlement instructions for orders submitted to the NYSE. In addition, the NYSE eliminated NYSE Rule 177 (Delivery Time—''Cash'' Contracts).[10]

Given these changes, FINRA is proposing to make conforming changes to Incorporated NYSE Rules 12, 177 and 282 to ensure consistency with NYSE's versions of Rules 12, 177 and 282.[11]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is necessary and appropriate to reduce the risk of customers missing the market and possibly receiving inferior priced executions because of legacy NYSE settlement instructions and to maintain consistency with the NYSE's amendments to its Rules 12, 177 and 282.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A)[13] of the Act and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative until 30 days after the date of filing.[15] However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative on March 13, 2009, the same date that NYSE's amendments are implemented. The Commission believes that allowing the proposed rule change to become operative on March 13, 2009 is consistent with the protection of investors and the public interest. The Commission notes that FINRA is merely revising its rules to conform to a proposed rule change by the NYSE that will be operative on March 13, 2009,[17] which will allow FINRA's Incorporated NYSE Rules to maintain their status as Common Rules under the Agreement. Accordingly, the Commission designates the proposed rule change to be operative on March 13, 2009.[18]

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 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–FINRA–2009–007 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–007. 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

[10] *Id.*

[11] Pursuant to Rule 17d–2 under the Exchange Act, NASD, NYSE, and NYSE Regulation, Inc. entered into an agreement (''Agreement'') to reduce regulatory duplication for firms that are Dual Members by allocating certain regulatory responsibilities for selected NYSE rules from NYSE Regulation to FINRA. The Agreement includes a list of all those rules (''Common Rules'') for which FINRA has assumed examination, enforcement and surveillance responsibilities under the Agreement relating to compliance by Dual Members to the extent that such responsibilities involve member firm regulation. *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules are the same NYSE rules that FINRA has incorporated into its rulebook. *See* Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct; File No. SR–NASD–2007–054).

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii) In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] *See* Securities Exchange Act Release No. 59446 (Feb. 25, 2009) (File No. SR–NYSE–2009–17).

[18] For purposes only of waiving the 30-day operative delay of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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 the 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–FINRA–2009–007 and should be submitted on or before March 31, 2009.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4965 Filed 3–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59498; File No. SR–FICC–2009–01]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Modifying the Appendix of the GSD–CME Cross-Margining Agreement, Deletion of the GSD–TCC Cross-Margining Arrangement, and Technical Changes and Corrections

March 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 13, 2009, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [2] and Rule 19b–4(f)(4) thereunder [3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change will amend the appendix of the cross-margining agreement between FICC and the Chicago Mercantile Exchange, Inc. (''CME'') (''FICC/CME Agreement''), and to make additional technical changes and corrections.

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, and C below, of the most significant aspects of such statements.

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

FICC is proposing to amend its Divisions' rules as follows:

1. Revisions to Appendix A of the Cross-Margining Agreement With the Chicago Mercantile Exchange, Inc.

Through its Government Securities Division (''GSD''), FICC currently participates in a cross-margining arrangement with the CME. The FICC/CME Agreement, which governs the arrangement, contains an Appendix A, which requires the parties to list other cross-margining or loss sharing arrangements to which they are parties and the order in which they will be considered when the parties calculate their available resources under the FICC/CME Agreement. The FICC/CME Agreement further provides that the parties may amend Appendix A without prior approval of the other party by giving notice to the other party.[4]

FICC has notified CME that it has amended Appendix A of the Agreement to: (1) Remove references to the cross-margining agreement with The Clearing Corporation (''TCC'') as that agreement is no longer in effect, (2) remove a reference to a multilateral netting contract and limited cross-guaranty agreement with the now-defunct Emerging Markets Clearing Corporation, (3) change the priority of the multilateral cross-guaranty agreements that FICC participates, and (4) make reference to the upcoming portfolio margining between GSD and FICC's Mortgage-Backed Securities Division (''MBSD''). This rule change incorporates these changes into the FICC/CME Agreement, which is a part of the GSD's rules.

2. Correction to MBSD Rules

FICC is also correcting a reference in MBSD's rules to reflect actual practice. While MBSD's fee schedule accurately labels a ''fee'' for non-compliance with MBSD trade input requirements, its rules incorrectly label this a ''fine.'' The proposed rule change corrects the fine reference.

3. Clarifications to GSD's Schedule of Time Frames

FICC is updating its Schedule of Time Frames to correct the time during which FICC's comparison, netting, settlement, and margining output normally is made available to members and to make clear that the funds-only settlement process occurs through the Federal Reserve's National Settlement Service.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [5] and the rules and regulations thereunder because it will make certain rule corrections and address the cross-margining agreements and therefore will support the prompt and accurate clearance and settlement of securities transactions.

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

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any written comments it receives.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [6] and Rule 19b–4(f)(4) [7] thereunder because it effects a change in an existing service of a registered clearing agency that does

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] Recitals F and G of the FICC/CME Agreement.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(4).