

Certificates. The Exchange believes that the provisions of Rule 5.2(j)(7), together with the Exchange's applicable surveillance, serve to foster investor protection and the public interest.

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

The Exchange does not believe that the proposed rule change will impose 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*

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 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 90 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 Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

### **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 No. SR-NYSEArca-2009-20 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-NYSEArca-2009-20. 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, 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-NYSEArca-2009-20 and should be submitted on or before April 9, 2009.

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

**Florence E. Harmon,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-59569; File No. SR-FICC-2009-03]**

#### **Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule To Impose a Charge on Members With a Fail-to-Deliver in Treasury Securities**

March 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 25, 2009, The Fixed Income

Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change No. SR-FICC-2009-03, which is described in Items I, II, and III below and have been prepared primarily by the FICC. The Commission is publishing this notice to solicit comments from interested parties on the proposed rule change as.

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

The proposed rule change will impose a charge on members with a fail-to-deliver position in treasury securities.<sup>2</sup>

#### **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 these statements.<sup>3</sup>

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

##### 1. Purpose

The Treasury Markets Practices Group ("TMPG"), a group of market participants active in the treasury securities market that is sponsored by the Federal Reserve Bank of New York (the "FRBNY"), has been in the process of devising ways to address the persistent settlement fails in treasury securities transactions that have arisen, according to the TMPG, due to the recent market turbulence and low short-term interest rates. In order to encourage market participants to resolve fails promptly, the TMPG has proposed for adoption a "best practice" that would call for the market-wide assessment of a charge on fail-to-deliver positions. As part of this implementation of this "best practice," the TMPG has asked the Government Securities Division of FICC ("GSD") to impose this charge on failed positions involving treasury securities within FICC.

<sup>2</sup> The exact text of the FICC's proposed rule change can be found in Attachment 1 of this filing or at [http://www.dtcc.com/downloads/legal/rule\\_filings/2009/ficc/2009-03.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2009/ficc/2009-03.pdf).

<sup>3</sup> The Commission has modified portions of the text of the summaries prepared by the FICC.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

The proposed charge will be equal to the product of net money due on the failed position and three (3) percent per annum minus the Target Fed funds target rate that is effective at 5 p.m. Eastern Standard Time on the business day prior to the originally scheduled settlement date and will be capped at three (3) percent per annum. The charge will be applied daily and will be a debit on the member's GSD monthly bill for a fail-to-deliver position and a credit on the member's GSD monthly bill for those with fail-to-receive position.

The following example illustrates the manner in which the proposed fails charge would apply:

Member A fails to deliver today on a \$50 million position on which he is owed \$50.1 million. The Target Fed funds rate yesterday at 5 p.m. was one (1) percent. The fails charge will be two (2) percent per annum and will be applied to the funds amount of \$50.1 million, thus equaling a charge of \$2,783.33 for that day. The bill of the member failing to deliver will reflect a debit of \$2,783.33.

In the event that FICC is the failing party because, for example, it received securities too close to the close of the Fedwire for redelivery, the fail charge will be distributed pro rata to the netting members based upon usage of the GSD's services, which is the same methodology that is used when FICC incurs finance charges.<sup>4</sup>

The proposed rule change provides that the Credit and Market Risk Management Committee of FICC's Board of Directors will retain the right to revoke application of the charge if industry events or practices warrant such revocation.

## 2. Statutory Basis

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act, as amended,<sup>5</sup> and the rules and regulations thereunder because the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions by discouraging persistent fails-to-deliver

in treasury securities and thereby not adversely affecting the safeguarding of securities or funds in FICC's control 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 impose 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*

FICC has neither solicited nor received written comments on the proposed rule change. 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-2009-03 in 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-FICC-2009-03. 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, on official business days between the hours of 10 a.m. and 3:30 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the FICC and on the 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-2009-03 and should be submitted on or before April 9, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>4</sup> FICC Rules, Section 6 of Rule 12.

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

## ATTACHMENT 1

Underlined, boldface text indicates additional language

~~Bracketed, boldface text~~ indicates deleted language

## GOVERNMENT SECURITIES DIVISION RULEBOOK

## RULE 11 – NETTING SYSTEM

Section 14 – Fails Charge

If a Netting Member does not satisfy a Deliver Obligation of Treasury securities on a particular Business Day, the Corporation shall apply a debit charge on the funds amount associated with the Netting Member's failed position (the "fails charge"). If a Netting Member fails to receive Securities representing its Receive Obligation of Treasury securities on a particular Business Day, the Corporation shall credit the Member in the amount of the fails charge.

The fails charge shall be the product of the (i) funds associated with a failed position and (ii) 3 percent per annum minus the Target Fed funds target rate that is effective at 5 p.m. EST on the Business Day prior to the originally scheduled settlement date, capped at 3 percent per annum.

In the event that the Corporation is the failing party because the Corporation received Securities too near the close of Fedwire for redelivery or for any other reason, the fail charge will be distributed pro rata to the Netting Members based upon usage of the Government Securities Division's services.

At the end of each calendar month, the Corporation shall accrue a Netting Member's debits and credits and the resulting amount (either a debit or credit) shall be included in the Member's monthly bill.

The Board shall have the right, in its sole discretion, to revoke application of the charge if industry events or practices warrant such revocation.

[FR Doc. E9-5978 Filed 3-18-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59570; File No. SR-NYSE-2009-28]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending NYSE Rules 13, 902, 903, 904, 905 and Rule 906 To Eliminate Certain Order Types From the Off-Hours Trading Facility

March 12, 2009.

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 March 11, 2009, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal 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 Exchange proposes to amend NYSE Rules 13 (Definitions of Orders), 902 (Off-Hours Trading Orders), 903 (Off-Hours Transactions), 904 (Priority of Off-Hours Trading Orders), 905 (Off-Hours Trading Reports and Recordkeeping) and Rule 906 (Impact of Trading Halts on Off-Hours Trading) to eliminate certain order types from the off-hours trading facility. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.nyse.com>.

#### 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 proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

Through this filing, the Exchange seeks to amend NYSE Rules 902, 903, 904 and 906 to remove certain off-hours trading functions from the Exchange’s Crossing Session I. The Exchange is making this change in connection with certain technology upgrades it expects to begin rolling out on or about March 16, 2009.

As explained more fully below, customers who previously relied on the trading functions in Crossing Session I that are being eliminated will be able to execute their off-hours trades through the NYSE MatchPoint® system. The Exchange will continue to accommodate certain types of off-hours trading (error offset trades and trades between a member and the DMM for the purpose of offsetting a market-on-close imbalance) in Crossing Session I.

###### I. Background

The Exchange initiated its Off-Hours Trading Facility in June 1991.<sup>5</sup> In connection with its implementation, the Exchange adopted the “900” series of rules to govern trading, order eligibility, order entry and recordkeeping requirements.

In one application of the Off-Hours Trading Facility, members and member organizations may enter orders to be executed at the NYSE closing price, that is, the price established by the last regular way sale in a security at the official closing of the 9:30 a.m. to 4 p.m. trading session (“Crossing Session I”). Orders may be entered for any Exchange-listed issue, other than a security that is subject to a trading halt at the close of the regular trading session<sup>6</sup> or is halted after 4 p.m.

<sup>5</sup> See Securities Exchange Act Release No. 29237 (May 31, 1991), 56 FR 24853 (June 3, 1991) approving File Nos. SR-NYSE-90-52 and 90-53 which established the NYSE Off-Hours Trading Facility on a pilot basis. See also, Securities Exchange Act Release No. 33992 (May 2, 1994), 59 FR 23907 (May 9, 1994) approving the NYSE Off-Hours Trading Facility on a permanent basis.

<sup>6</sup> This includes any market-wide trading halt instituted under Exchange Rule 80B (Trading Halts Due to Extraordinary Market Volatility).

Crossing Session I normally runs from 4:15 p.m. to 5 p.m. on each trading day.

Under Rule 902(a)(i) and (ii)(A) respectively, members may enter single-sided orders (*i.e.*, either an order to buy or an order to sell) and coupled orders (*i.e.*, both a buy and a sell order) into Crossing Session I. In addition, pursuant to Rule 902(b), the Exchange will migrate into Crossing Session I for possible execution any good-till-cancelled (“GTC”) orders that have been designated as eligible for execution in the Off-Hours Trading Facility.<sup>7</sup> These types of orders entered into Crossing Session I are usually executed at the end of the Session, *i.e.*, at 5 p.m.

Rules 903 and 904 describe, in pertinent part, how orders that are entered into the off-hours trading facility establish priority, and the execution protocols for such orders. Specifically, Rule 903 provides that single-sided and migrated GTX orders are to be executed against opposite side single-sided and GTX orders in the Off-Hours trading Facility, while coupled orders are to be executed against the other side of the coupled order. Rule 904 provides that GTX orders retain the priority among themselves that existed when they were entered into Display Book®, while the priority of coupled orders will be determined based upon their sequence of entry into the Off-Hours Trading facility.

Rule 905 requires that certain records be maintained by members and member organizations with respect to off-hours trading.

Rule 906 outlines procedures under which Off-Hours Trading Facility orders in an NYSE-listed security may go unexecuted if such security was subject to a trading halt.

###### II. Proposed Changes to Off-Hours Order Processing and Rule Amendments

The Exchange is preparing to institute a number of technology changes to its systems that will foster more efficient and cost effective processing of orders it receives. As part of these changes, the Exchange is phasing out the SuperDOT® system and will replace it with a system referred to as Super Display Book (“SDBK”).

Because the Off-Hours Trading Facility relies on the SuperDOT system for certain trade processing functions, the Exchange plans to eliminate the ability for single-sided, coupled orders and GTX to be entered or migrated into the off-hours trading facility known as

<sup>7</sup> See NYSE Rule 13 (Definitions of Orders). GTC orders that have been designated as “Off-Hours Eligible” under this rule are referred to as “GTX orders.”

<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> 17 CFR 240.19b-4(f)(6).