

managing the circumstances in which their orders are executed.

#### *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**

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder.<sup>5</sup>

At any time within 60 days of the filing of such 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2009-111 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-2009-111. 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 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-2009-111 and should be submitted on or before January 19, 2010.

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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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61214; File No. SR-FICC-2009-10]

#### **Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Fixed Income Clearing Corporation's Board of Directors Election Process and Delegation Authority**

December 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 16, 2009, Fixed Income Clearing Corporation ("FICC") 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 primarily by FICC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant approval on an accelerated basis.

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

FICC's parent company, The Depository Trust & Clearing Corporation ("DTCC") intends in the future to consider nominating for election to its Board of Directors candidates that are not participants of its clearing agency subsidiaries ("non-participant candidates").<sup>2</sup> Because certain of DTCC's organizational documents mandate that the directors of DTCC shall be the same as the directors of FICC, in the future FICC's Board of Directors may include directors who are not employees of its participants ("non-participant directors").

In addition, the rules of FICC's Government Securities Division ("GSD") and FICC's Mortgage-Backed Securities Division ("MBSD") are being revised to allow the Board to delegate certain responsibilities.

#### **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

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

<sup>2</sup> DTCC's clearing corporation subsidiary participants include The Depository Trust Company, National Securities Clearing Corporation, and Fixed Income Clearing Corporation.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

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

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.<sup>3</sup>

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

DTCC has in the past nominated for election to its Board of Directors employees of its clearing corporation subsidiaries' participants. In the future, DTCC intends to consider nominating for election to its Board of Directors people who are not employees of its clearing corporation subsidiaries' participants ("non-participant candidates"). Because certain of DTCC's organizational documents mandate that the directors of DTCC shall be the same as the directors of FICC, in the future FICC's Board may include directors who are not employees of its participants ("non-participant directors"). FICC believes that non-participant directors may bring additional skills and expertise and introduce different perspectives to its Board.

In addition, the rules of FICC's Government Securities Division ("GSD") and FICC's Mortgage-Backed Securities Division ("MBS") assign to FICC's Board certain administrative responsibilities, including, for example, responsibilities related to approving membership applications and other related matters. These rules are being revised to allow the Board to delegate these responsibilities.<sup>4</sup>

These changes will conform FICC's rules and practices to the rules and practices of DTCC's other clearing corporation subsidiaries—The Depository Trust Company and National Securities Clearing Corporation.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to FICC because FICC's rules will continue to provide for a fair representation of its participants in the selection of its directors and in the administration of its affairs and will enable FICC to act in a more expedient manner and therefore, to better promote the prompt and accurate clearing and settlement of securities transactions.

<sup>3</sup> The Commission has modified parts of these statements.

<sup>4</sup> The text of the proposed rule change can be found at [http://www.dtcc.com/downloads/legal/rule\\_filings/2009/ficc/2009-10.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2009/ficc/2009-10.pdf).

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

FICC does not believe that the proposed rule change would have any impact on 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**

Section 17A(b)(3)(C) of the Act requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission has previously found that FICC's participants are fairly represented in the selection of its Board and in the administration of its affairs.<sup>5</sup> This rule change should not have any adverse effect on FICC's participants' representation in the selection of FICC's Board or in the administration of FICC's affairs. The Commission also recognizes that it may benefit FICC to have non-participants directors on its Board because such directors may provide skills or perspectives not possessed by participant directors. Therefore, the Commission finds that FICC's proposed rule change to have non-participant directors serve on its Board should provide benefits while continuing to provide for the fair representation of FICC's participants in the selection of its directors and administration of its affairs.

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency are designed to promote the prompt and accurate clearing and settlement of securities transactions. The Commission finds that by providing its Board with additional authority to delegate certain of its responsibilities, such as, for example, responsibilities related to approving membership applications and other related matters, FICC will be able to act in a more expedient manner and therefore, better able to promote the prompt and accurate clearing and settlement of securities transactions.

<sup>5</sup> See, e.g., Securities Exchange Act Release No. 52922 (December 7, 2005), 70 FR 74070 (December 14, 2005) (File Nos. SR-DTC-2005-16, SR FICC-2005-19, and SR-NSCC-2005-14).

FICC has requested that the Commission approve this rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because by so approving FICC will be able to implement the rule change in time to include non-participant directors on its Board for the 2010 Board term.

**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-2009-10 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-FICC-2009-10. 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 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at [http://www.dtcc.com/downloads/legal/rule\\_filings/2009/ficc/2009-10.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2009/ficc/2009-10.pdf). 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-2009-10 and should be submitted on or before January 19, 2010.

## 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 with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.<sup>6</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-FICC-2009-10) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61225; File No. SR-ISE-2009-104]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, LLC Relating to Conforming ISE Rule 622 With Comparable NASD Rule 11870

December 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 14, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>6</sup> In approving the proposed rule changes, the Commission considered the proposals' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>7</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.

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

The Exchange proposes to amend ISE Rule 622 (Transfer of Accounts) to conform it to the corresponding rule of the Financial Industry Regulatory Authority ("FINRA"), formerly the National Association of Securities Dealers ("NASD"), for the purposes of the 17d-2 Agreement.

### 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 self-regulatory organization 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. The self-regulatory organization 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

The Exchange proposes to amend ISE Rule 622 (Transfer of Accounts) to conform it to corresponding NASD Rule 11870 (Customer Account Transfer Contracts) for the purposes of the agreement between the parties pursuant to Rule 17d-2<sup>3</sup> under the Securities Exchange Act of 1934 (the "Exchange Act") (that agreement, the "17d-2 Agreement") and the related certification by the Exchange which states that the requirements contained in certain ISE rules are identical to, or substantially similar to, certain NASD rules that have been identified as comparable (that certification, the "Common Rule Certification").<sup>4</sup>

Specifically, the Exchange proposes to amend ISE Rule 622(b)(1) by reducing the number of days from five (5) business days to one (1) business day that the Carrying Member (as defined in Rule 622(a)) must (i) validate and return the transfer instruction (with an attachment reflecting all positions and money balances as shown on its books) to the Receiving Member (as defined in Rule 622(a)), or (ii) take exception to the transfer instruction for reasons other

<sup>3</sup> 17 CFR 240.17d-2.

<sup>4</sup> See SEC Release No. 55367 (February 27, 2007), 72 FR 9983 (March 6, 2007) (Order approving and declaring effective a plan for the allocation of regulatory responsibilities between ISE and NASD).

than securities positions or money balance discrepancies and advise the Receiving Member of the exception taken. Additionally, the Exchange proposes to add rule text that will allow for the time frame set forth in paragraph (b)(1) to change from time-to-time when such time frame is changed in any publication, relating to the ACATS facility, by the National Securities Clearing Corporation. The changes discussed above are identical to the requirements set forth in NASD Rule 11870. By making these changes, the Exchange is ensuring that FINRA will retain regulatory responsibility for this rule under the 17d-2 Agreement because ISE Rule 622 will remain identical to NASD rule 11870, as specified in the Common Rule Certification.

##### 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is found in Section 6(b)(5), in that the proposed rule filing is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system by creating consistency between the requirements contained in rules of the ISE and NASD that are covered by an agreement approved by the Commission under Rule 17d-2.

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

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)