

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 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 website viewing and printing 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 will also 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-NYSEAmex-2010-90 and should be submitted on or before September 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62826; File No. SR-NYSE-2010-63]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Amend the Exchange Price List

September 1, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 30, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange

Commission (the "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.

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

The Exchange proposes to amend its 2010 Price List to modify the fees it charges for all market-at-the-close ("MOC") and limit-at-the-close ("LOC") orders executed in the NYSE Closing Auction. For stocks with a per share stock price of \$1.00 or more, the fee will increase from \$0.0007 per share executed to \$0.00085 per share executed. For stocks with a per share stock price less than \$1.00 per share, the fee will change from (A) the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) \$0.0007 per share executed to (B) the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) \$0.00085 per share executed. The amended pricing will take effect on September 1, 2010. The text of the proposed rule change is available at the Exchange, at <http://www.nyse.com>, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

#### 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 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

The Exchange proposes to amend its 2010 Price List to modify the fees it charges for all MOC and LOC orders executed in the NYSE Closing Auction. For stocks with a per share stock price of \$1.00 or more, the fee will increase from \$0.0007 per share executed to \$0.00085 per share executed. For stocks with a per share stock price less than

\$1.00 per share, the fee will change from (A) the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) \$0.0007 per share executed to (B) the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) \$0.00085 per share executed. The Exchange notes that The NASDAQ Stock Market LLC recently made a similar filing increasing the fee that it charges for MOC and LOC orders in its closing cross from \$0.0007 per share executed to \$0.0010 per share executed.<sup>4</sup>

These changes are intended to be effective immediately for all transactions beginning September 1, 2010.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations will be charged the same amount and access to the Exchange's market is offered on fair and non-discriminatory terms. Further, a competing exchange also recently implemented a similar fee change for its market participants, as described above.

##### 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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and

<sup>4</sup> See Securities Exchange Act Release No. 62592 (July 29, 2010), 75 FR 47053 (August 4, 2010) (SR-NASDAQ-2010-095).

<sup>5</sup> 15 U.S.C. 78f(b) [sic].

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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-NYSE-2010-63 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-NYSE-2010-63. 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 website (<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 website viewing and printing 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 will also 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-NYSE-2010-63 and should be submitted on or before September 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

[FR Doc. 2010-22447 Filed 9-8-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62828; File No. SR-FICC-2010-02]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Amend the Rules of the Government Securities Division and the Mortgage-Backed Securities Division To Change the Classification of U.S. Branches or Agencies of Non-U.S. Banks From Foreign to U.S. Members

September 2, 2010.

#### I. Introduction

On June 24, 2010, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2010-02 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the **Federal Register** on July 19, 2010.<sup>2</sup> No comment letters were received on the proposal. This order approves the proposal.

#### II. Description

FICC will amend the Rules of its Government Securities Division ("GSD") and Mortgage Backed Securities Division ("MBSD") to classify as U.S. Members those Members of the GSD and MBSD that are U.S. Branches or agencies of non-U.S. Banks ("U.S. Branches"). GSD and MBSD Rules currently classify the membership of such U.S. Branches as "Foreign."

The classification of U.S. Branches as U.S. Members harmonizes FICC's Rules with the other clearing agency subsidiaries of The Depository Trust

and Clearing Corporation, The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC").<sup>3</sup> FICC also believes the rule change is appropriate because it reflects that U.S. Branches are regulated by a U.S. regulator or a state regulator. This means that the appropriate domestic regulator treats U.S. Branches as U.S. entities for most significant matters, and consequently an insolvency of such a member would be determined by applicable domestic "ring-fence" laws.<sup>4</sup> Under the Rule changes, such members will be treated as domestic members for all purposes under FICC's Rules and Procedures unless FICC states otherwise in its Rules.<sup>5</sup>

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act<sup>6</sup> and the rules and regulations thereunder applicable to FICC. In particular, the Commission believes that the amendments FICC is making to its Rules to will provide consistent treatment to all its Members that are regulated by a U.S. or state regulator and that are subject to a domestic insolvency regime are consistent with FICC's obligations under Section 17A(b)(3)(F),<sup>7</sup> which requires, among other things, that the rules of a clearing agency are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the

<sup>3</sup> DTC and NSCC already classify U.S. branches or agencies of foreign banks as domestic Members. This is reflected in Section 2 of DTC's Policy Statements on the Admission of Participants and in Addendum O of NSCC's Rules titled "Admission of Non-U.S. Entities as Direct NSCC Members."

<sup>4</sup> In the United States, "ring-fencing" refers to the procedure for dealing with branches or agencies of insolvent foreign banks in the United States pursuant to which the federal or state regulator, as applicable, will seize and administer the local assets of an insolvent institution, with a preference for local creditors in a liquidation that is separate from the liquidation of the parent foreign bank as a whole.

<sup>5</sup> Such members will no longer be required to submit annual updates to their foreign legal opinions as currently required by FICC rules for non-U.S. entities unless FICC deems it necessary to address legal risk. Applicants in this category will however continue to be required to submit an initial foreign legal opinion on their home country law with their membership application.

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 62478 (July 9, 2010), 75 FR 41908 (July 19, 2010).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).