

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.*

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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).

requirements of Section 17A of the Act<sup>8</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-FICC-2010-02) be, and hereby is, approved.<sup>10</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62830; File No. SR-MSRB-2010-07]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G-37, on Political Contributions and Prohibitions on Municipal Securities Business

September 2, 2010.

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 August 25, 2010, the Municipal Securities Rulemaking Board (“MSRB”) 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 MSRB. 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 MSRB has filed with the Commission a proposed rule change which consists of an interpretive notice regarding Rule G-37, on political contributions and prohibitions on municipal securities business (referred to hereafter as “proposed rule change”). The MSRB has requested an effective date for the proposed rule change of sixty (60) days after Commission approval of the proposed rule change.

The text of the proposed rule change is available on the MSRB’s Web site at <http://www.msrb.org/msrb1/sec.asp>, at the MSRB’s principal office, 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, the MSRB included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB 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 proposed rule change consists of an interpretive notice regarding Rule G-37, on political contributions and prohibitions on municipal securities business.<sup>3</sup> Under Rule G-37, certain contributions to elected officials of municipal securities issuers made by brokers, dealers and municipal securities dealers (“dealers”), municipal finance professionals (“MFPs”) associated with dealers, and political action committees (“PACs”) controlled by dealers and their MFPs (“dealer-controlled PACs”)<sup>4</sup> may result in prohibitions on dealers from engaging in municipal securities business with such issuers for a period of two years from the date of any triggering contributions.

Rule G-37 requires dealers to disclose certain contributions to issuer officials, state or local political parties, and bond ballot campaigns, as well as other information, on Form G-37 to allow public scrutiny of such contributions

<sup>3</sup> Rule G-37 defines municipal securities business as: (i) The purchase of a primary offering of municipal securities from an issuer on other than a competitive bid basis; (ii) the offer or sale of a primary offering of municipal securities on behalf of an issuer; (iii) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis; or (iv) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

<sup>4</sup> The MSRB has previously stated that the matter of control depends upon whether or not the dealer or the MFP has the ability to direct or cause the direction of the management or policies of the PAC (MSRB Question & Answer No. IV. 24—Dealer Controlled PAC).

and the municipal securities business of a dealer. In addition, dealers and MFPs generally are prohibited from soliciting others (including affiliates of the dealer or any PACs) to make contributions to officials of issuers with which the dealer is engaging or seeking to engage in municipal securities business, or to political parties of a state or locality where the dealer is engaging or seeking to engage in municipal securities business. Dealers and MFPs are prohibited from circumventing Rule G-37 by direct or indirect actions through any other persons or means.<sup>5</sup>

Due to changes in the financial markets since the adoption of Rule G-37 and recent market turmoil, many dealers have become affiliated with a broad range of other entities in increasingly diverse organizational structures. Some of these affiliated entities (including but not limited to banks, bank holding companies, insurance companies and investment management companies) have formed or otherwise maintain relationships with PACs (“affiliated PACs”) and other political organizations, many of which may make contributions to issuer officials. Such relationships raise questions regarding the extent to which affiliated PACs may effectively be controlled by dealers or their MFPs and thereby constitute dealer-controlled PACs whose contributions are subject to Rule G-37. Further, such relationships raise concerns regarding whether the contributions of such affiliated PACs, even if not viewed as dealer-controlled PACs, may be used by dealers or their MFPs to circumvent Rule G-37 as indirect contributions for the purpose of obtaining or retaining municipal securities business. As a result, the MSRB has filed the proposed rule change to provide additional guidance with regard to the potential for affiliated PACs to be viewed as dealer-controlled PACs.

The proposed rule change sets out factors that may result in an affiliated PAC being viewed as controlled by a dealer or an MFP of a dealer and thereby being treated as a dealer-controlled PAC for purposes of Rule G-37. The proposed rule change would: i) provide guidance on when a dealer’s affiliated PAC might be viewed as controlled by the dealer for purposes of Rule G-37; and ii) ensure that the industry is

<sup>5</sup> Rule G-37(d) provides that no broker, dealer or municipal securities dealer or any municipal finance professional shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of the rule. Section (b) relates to the ban on business and Section (c) relates to the prohibition on soliciting and coordinating contributions.

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> In approving the proposed rule change, the Commission considered the proposal’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</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.