

establish Canadian retirement accounts while living and working in Canada and who later move to the United States (“Canadian-U.S. Participants” or “participants”) often continue to hold their retirement assets in their Canadian retirement accounts rather than prematurely withdrawing (or “cashing out”) those assets, which would result in immediate taxation in Canada.

Once in the United States, however, these participants historically have been unable to manage their Canadian retirement account investments. Most investment companies (“funds”) that are “qualified companies” for Canadian retirement accounts are not registered under the U.S. securities laws. Securities of those unregistered funds, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirement of the Investment Company Act of 1940 (“Investment Company Act”).<sup>1</sup> As a result of this registration requirement, Canadian-U.S. Participants previously were not able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

The Commission issued a rulemaking in 2000 that enabled Canadian-U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian-U.S. Participants and sales to Canadian retirement accounts.<sup>2</sup> Rule 7d-2 under the Investment Company Act<sup>3</sup> permits foreign funds to offer securities to Canadian-U.S. Participants and sell securities to Canadian retirement accounts without registering as investment companies under the Investment Company Act.

Rule 7d-2 contains a “collection of information” requirement within the meaning of the Paperwork Reduction Act of 1995.<sup>4</sup> Rule 7d-2 requires written offering materials for securities offered or sold in reliance on that rule to disclose prominently that those

securities and the fund issuing those securities are not registered with the Commission, and that those securities and the fund issuing those securities are exempt from registration under U.S. securities laws. Rule 7d-2 does not require any documents to be filed with the Commission.

Rule 7d-2 requires written offering documents for securities offered or sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and may not be offered or sold in the United States unless registered or exempt from registration under the U.S. securities laws, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. The burden under the rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter, or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement.

The staff estimates that there are 2075 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act.<sup>5</sup> Most of these funds have already relied upon the rule and have made the one-time change to their offering documents required to rely on the rule. The staff estimates that 104 (5 percent) additional Canadian funds may newly rely on the rule each year to offer securities to Canadian-U.S. Participants and sell securities to their Canadian retirement accounts, thus incurring the paperwork burden required under the rule. The staff estimates that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 312 offering documents. The staff therefore estimates that 104 respondents would make 312 responses by adding the new disclosure statement to approximately 312 written offering documents. The staff therefore estimates that the annual burden associated with the rule 7d-2 disclosure requirement would be 52 hours (312 offering documents × 10

minutes per document). The total annual cost of these burden hours is estimated to be \$16,432 (52 hours × \$316 per hour of attorney time).<sup>6</sup>

These burden hour estimates are based upon the Commission staff’s experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Jeffrey Heslop, Acting, Director/CIO, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: October 6, 2010.

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

[FR Doc. 2010-25737 Filed 10-12-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

<sup>6</sup> The Commission’s estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (“SIFMA”). The \$316 per hour figure for an attorney is from SIFMA’s *Management & Professional Earnings in the Securities Industry 2009*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

<sup>1</sup> 15 U.S.C. 80a. In addition, the offering and selling of securities that are not registered pursuant to the Securities Act of 1933 (“Securities Act”) is generally prohibited by U.S. securities laws. 15 U.S.C. 77.

<sup>2</sup> See Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33-7860, 34-42905, IC-24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)]. This rulemaking also included new rule 237 under the Securities Act, permitting securities of foreign issuers to be offered to Canadian-U.S. Participants and sold to Canadian retirement accounts without being registered under the Securities Act. 17 CFR 230.237.

<sup>3</sup> 17 CFR 270.7d-2.

<sup>4</sup> 44 U.S.C. 3501-3502.

<sup>5</sup> Investment Company Institute, 2010 Investment Company Fact Book (2010) at 183, tbl. 60.

*Extension:*

Rule 425; OMB Control No. 3235-0521;  
SEC File No. 270-462.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget the request for extension of the previously approved collection of information discussed below.

Rule 425 (17 CFR 230.425) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires the filing of certain prospectuses and communications under Rule 135 (17 CFR 230.135) and Rule 165 (17 CFR 230.165) in connection with business combination transactions. The purpose of the rule is to permit more oral and written communications with shareholders about tender offers, mergers and other business combination transactions on a more timely basis, so long as the written communications are filed on the date of first use. The information provided under Rule 425 is made available to the public upon request. Also, the information provided under Rule 425 is mandatory. Approximately 1,680 issuers file communications under Rule 425 at an estimated 0.25 hours per response for a total of 420 annual burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Jeffrey Heslop, Acting Director/CIO, Office of Information Technology, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-25738 Filed 10-12-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63038; File No. SR-FICC-2010-04]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change to Provide Clarity With Respect to the Close Out Netting of the Government Securities Division in the Event of the Fixed Income Clearing Corporation's Default or Insolvency

October 5, 2010.

#### I. Introduction

On August 12, 2010, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-FICC-2010-04 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 August 31, 2010.<sup>2</sup> No comment letters were received on the proposal. This order approves the proposal.

#### II. Description

FICC is proposing to add a provision to the rules of the Government Securities Division ("GSD") to make explicit the close out netting that would be applied to obligations between FICC and its members in the event that FICC becomes insolvent or defaults in its obligations to its members.<sup>3</sup>

FICC has been asked by some of its dealer members to add a provision to the rules of GSD to make explicit the close out netting of obligations between FICC and its members in the event that FICC becomes insolvent or defaults in its obligations to its members. Such members have stated that such a provision would provide clarity in their application of balance sheet netting to their transactions at FICC under U.S. GAAP in accordance with the criteria specified in the Financial Accounting Standards Board's Interpretation No. 39, *Offsetting of Amounts Related to Certain Contracts* (FIN 39). The members have stated further that a close out provision would allow them to comply with Basel Accord Standards relating to netting. Specifically, firms are able to calculate their capital requirements on the basis of their net credit exposure where they have legally

enforceable netting arrangements with their counterparties, which includes a close out netting provision in the event of the default of a counterparty (in this case, the division of FICC acting as a CCP).

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act<sup>4</sup> and the rules and regulations thereunder applicable to FICC.<sup>5</sup> In particular, the Commission believes that by adding a close out provision to its rules, FICC is providing its members with clarity with respect to close out netting that would be applied to obligations of FICC and its members in the event of an FICC insolvency or default and in the calculation of their capital requirements with respect to their net credit exposure where members have legally enforceable netting arrangements with their counterparties. The proposal is therefore consistent with the requirements of Section 17A(b)(3)(F),<sup>6</sup> which requires, among other things, that the rules of a clearing agency are designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

#### 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 requirements of Section 17A of the Act<sup>7</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-FICC-2010-04) be, and hereby is, approved.

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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<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 15 U.S.C. 78q-1.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<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. 62767 (August 26, 2010), 75 FR 53368.

<sup>3</sup> The specific language of the proposed provision is available at [http://www.dtcc.com/downloads/legal/rule\\_filings/2010/ficc/2010-04.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2010/ficc/2010-04.pdf).