

Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.<sup>18</sup>

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that

the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) Above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>18</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,<sup>19</sup> as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will not invest in non-U.S. equity securities, loan participation agreements, and Rule 144A securities. In addition, pursuant to the terms of the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund will not purchase illiquid securities.

(7) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>20</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (SR-NYSEArca-2011-51) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65479; File No. SR-FICC-2011-06]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Eliminate Two Rules of the Mortgage-Backed Securities Division That FICC Believes Are No Longer Utilized or Necessary

October 4, 2011.

#### I. Introduction

On August 17, 2011, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-FICC-2011-06 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> The proposed rule change was published for comment in the Federal Register on August 31, 2011.<sup>3</sup> The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

This rule change will eliminate two Mortgage-Backed Securities Division ("MBSD") rules which FICC believes are no longer utilized or necessary. The first rule that will be eliminated is Article II, Rule 1, Section 3, which was put in place to stem certain abuses of cash adjustments taking place in the mid to late 1990s (specifically, traders were manipulating pricing on their submission of trades in order to maximize their cash adjustments). Because cash adjustments were deleted from the rules via the approved rule filing FICC 2010-08,<sup>4</sup> FICC believes the rule imposing trade restrictions between accounts is no longer necessary.

The second rule that will be eliminated relates to the "match modes" currently referenced in the MBSD rules. Currently, the rules provide that dealers may elect to have the comparison of their transactions governed in either "Exact Match Mode" or "Net Position Match Mode." In Exact Match Mode, trade input that matches in all other respects will be compared only if the par amount of the eligible securities reported to have been sold or purchased

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 34-65198 (August 25, 2011), 76 FR 54268 (August 31, 2011).

<sup>4</sup> See Securities Exchange Act Release No. 34-63611 (December 28, 2010), 76 FR 408 (January 4, 2011) (SR-FICC-2010-08).

<sup>19</sup> See 17 CFR 240.10A-3.

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

by the dealer for a particular transaction is identical to the par amount for a particular transaction reported by the broker. In a Net Position Match Mode, trade input that matches in all other respects will be compared only if the aggregate par amount for one or more transactions in eligible securities reported to have been sold or purchased by the dealer equals the aggregate par amount for one or more transactions reported by the broker. Currently, no participants have elected to have their transactions governed in Exact Match Mode. FICC believes there is no need to provide participants with a choice of match mode because MBSD's system already attempts to find an exact match for trade input and, only if an exact match is not found, will the system revert to Net Position Match Mode. This change will require the deletion of subpart (a) of Article II, Rule 3, Section 4 and conforming changes to the definitions (in Article I) and in Article II, Rule 3, Sections 3 and 4 to reflect that Net Position Match Mode will be the only available match mode.

Given that FICC believes these rules have no utility for MBSD's participants, MBSD proposed to eliminate these rules. FICC believes elimination of these rules will also promote efficiency. MBSD is currently undertaking a rewrite of its internal software applications and operating systems to promote efficiency and streamline its operations. Approval of the elimination of these rules will allow MBSD to avoid writing unnecessary coding during the rewrite process.

### III. Discussion

Section 17A(b)(3)(F) of the Act<sup>5</sup> requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that because the proposed rule change removes outdated rules that no longer have utility for participants and conserves resources by avoiding the writing of unnecessary code during MBSD's software rewrite process, it is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

### 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>6</sup>

and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-FICC-2011-06) be, and hereby is, approved.<sup>8</sup>

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

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65480; File No. SR-CBOE-2011-091]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend CBOE Stock Exchange Transaction Fees

October 4, 2011.

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 September 30 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 CBOE Stock Exchange ("CBSX") transaction fees. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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>9</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.

#### 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

CBSX proposes to modify its fees for transactions in securities priced \$1 or greater. The Exchange proposes to adopt a Maker fee of \$0.0017 per share and a Taker rebate of \$0.0015 per share. For a Maker that adds more than two million shares of liquidity to CBSX in a single day, the Exchange proposes a fee of \$0.0015 per share. This lower rate will be calculated on a daily basis. Market participants who share a trading acronym or MPID may aggregate their trading activity for purposes of this rate. Qualification for this rate will require that a market participant appropriately indicate his trading acronym and/or MPID in the appropriate field on the order. CBSX will promulgate an information circular to direct market participants on how to accurately qualify and aggregate their trading activity in order to receive this reduced rate. CBSX also proposes to change the language on the Fees Schedule describing the execution type for transactions in securities priced below \$1 from "Single-sided execution" to "Maker or Taker" in order to achieve consistency on the Fee Schedule and make clear that such fee applies to either the Maker or the Taker in transactions in securities priced below \$1.

The proposed fee change for transactions in securities priced at \$1 or greater is intended to encourage increased trading activity and liquidity on CBSX, which would benefit all market participants. By encouraging market participants to hit a threshold of executing at least two million shares a day (at which point such market participants would receive the lower Maker fee for all shares executed by the market participant that day), the Exchange incentivizes market

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

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