

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68133; File No. SR-FICC-2012-08]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes To Clarify a Stated Policy With Regard to Existing Provisions of the Loss Allocation Rules of the Government Securities Division and the Mortgage-Backed Securities Division

November 1, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on October 19, 2012, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II, and III below, which Items have been prepared primarily by FICC. FICC filed the proposal pursuant to Section 19(b)(3)(A)(i) of the Act<sup>2</sup> and Rule 19b-4(f)(1)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

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

The proposed rule changes serve to clarify FICC’s stated policy with regard to existing provisions of the Rules of the Government Securities Division (“GSD”) and the Mortgage-Backed Securities Division (“MBS”) (each, a “Division”) concerning loss allocation. The proposed rule changes will similarly clarify FICC’s stated policy regarding MBS’s Rules governing indemnification.

#### 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 changes and discussed any comments it received on the proposed rule changes. 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 these statements.<sup>4</sup>

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule changes will clarify FICC’s stated policy with regard to existing provisions of GSD’s and MBS’s Rules concerning loss allocation. The proposed rule changes will similarly clarify FICC’s stated policy with regard to MBS’s existing indemnification rules. The policies described below are consistent with the responses that FICC has provided to firms that have raised questions about the Divisions’ loss-allocation and indemnification provisions.

The question has arisen as to whether a Tier One Member<sup>5</sup> of a Division may cap its potential loss allocation liability with respect to losses caused by another Member of the Division. FICC wishes to make clear that the answer to this question is yes; a Tier One Member may, under the Rules of each Division, cap its liability from losses allocated to it by appropriately terminating its membership in the applicable Division and withdrawing as a Member as described below.<sup>6</sup>

FICC’s loss-allocation provisions are contained in Rule 4, Section 7 of the respective Rules of each Division. Section 7 provides that any loss or liability incurred by FICC as a result of a default by a Member or the failure of a Member to fulfill its obligations to FICC under the applicable Rules of each Division is satisfied pursuant to the payments and allocation methods described in that Section. There are two potential losses that FICC may allocate to its Members: Remaining Losses and Other Losses. Section 7(g)(ii) provides that a Member of either Division may withdraw from FICC and have its liability from an allocation based on any *Other Loss* be limited to the amount of its Required Fund Deposit for the Business Day on which FICC notified the Member of such allocation. Section 7(g)(ii), however, is silent as to whether a Member may withdraw and cap its liability from *Remaining Losses*.

<sup>4</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>5</sup> The question does not arise with respect to Tier Two Members because Tier Two Members are not subject to loss mutualization.

<sup>6</sup> The cap applies per Division. Accordingly, a Member that participates in both Divisions could potentially be subject to loss allocation obligations in both Divisions if the defaulting Member that caused the loss which gave rise to the allocation was also a Member of both Divisions. Each Division operates within its own set of Rules and Members.

FICC wishes to make clear its stated policy that a Member may withdraw from either Division and cap its liability from Remaining Losses with respect to that Division. FICC recognizes that it cannot impose unlimited liability on its Members. Many of its Members are depository institutions that are barred by federal law from being exposed to unlimited third-party liabilities.<sup>7</sup> In 2005, FICC obtained a ruling from the Office of the Comptroller of the Currency (“OCC”) in which OCC observed that a substantially similar provision in an older version of the GSD Rules did not expose Members to unlimited third-party liabilities, and that Members would be permitted to withdraw from FICC prior to the imposition of such liabilities.<sup>8</sup> While the GSD rules then in effect are different from the GSD and MBS Rules now in effect, FICC believes that the spirit of the 2005 rules was substantially similar to that of the current GSD and MBS Rules. FICC also recognizes that its Members, as part of their due diligence in evaluating their risks as clearing organization participants, need to be able to identify and quantify risks, such as potential loss allocation obligations.

Therefore, FICC is clarifying its stated policy that, under its loss-allocation provisions, FICC will permit a Tier One Member of either Division to withdraw its membership pursuant to the procedure outlined in the Division’s Rules, and thereby cap the Member’s liability with respect to Remaining Losses and Other Losses at the amount of its Required Fund Deposit, as measured in accordance with the applicable Division’s Rules (the cap would apply after allocation of the \$50,000 described in Section 7(c) of GSD Rule 4 and Section 7(d) of MBS Rule 4). This limitation applies with respect to a single event of insolvency or default.<sup>9</sup> This clarification is being made to Section 7 of GSD Rule 4 and Section 7 of MBS Rule 4.

An additional question has arisen as to whether the indemnification obligation contained in the last sentence of MBS Rule 3, Section 15 is also subject to the cap on liability discussed above with respect to Remaining Losses and Other Losses. FICC wishes to make clear that the answer to this question is also yes; the assessment authority in the

<sup>7</sup> See 12 CFR 7.1017.

<sup>8</sup> See <http://www.occ.gov/static/interpretations-and-precedents/Feb05/int1014.pdf>.

<sup>9</sup> The withdrawing Member may become subject to loss allocation obligations that arise due to subsequent Member defaults to the extent that the Member continues to maintain positions on the books of the applicable Division. See GSD Rule 3, Section 13 and MBS Rule 3, Section 14.

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>3</sup> 17 CFR 240.19b-4(f)(1).

last sentence of MBS Rule 3, Section 15 (where the loss cannot be attributed to an identifiable Member or Members) is subject to the same cap. Thus, a Member may withdraw from MBS Rule 3 per the procedure outlined in the Division's Rules and thereby cap its liability at the amount of its Required Fund Deposit on the Business Day on which FICC notified the Member of the assessment. This clarification is being made to MBS Rule 3, Section 15.

FICC believes the proposed rule changes are consistent with Section 17A of the Act<sup>10</sup> and the rules and regulations thereunder applicable to FICC because they will provide FICC Members with clarity regarding FICC's loss-allocation rules, which will allow Members to gauge their risks more accurately.

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

FICC does not believe the proposed rule changes would have any impact, 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 changes have not 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**

The foregoing proposed rule changes have become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>11</sup> and Rule 19b-4(f)(1)<sup>12</sup> thereunder because they constitute a stated policy with respect to the meaning, administration or enforcement of FICC's existing rules. At any time within 60 days of the filing of the proposed rule changes, the Commission summarily may temporarily suspend such rule changes 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.<sup>13</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2012-08 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-2012-08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. 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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at FICC's principal office and on FICC's Web site at [http://www.dtcc.com/downloads/legal/rule\\_filings/2012/ficc/FICC\\_SR\\_2012\\_08.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2012/ficc/FICC_SR_2012_08.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-2012-08 and should be submitted on or before November 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68127; File No. SR-Phlx-2012-124]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Branch Offices**

November 1, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 24, 2012, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 Rule 748 titled "Supervision" to require member organizations for which the Exchange is the Designated Examining Authority ("DEA") to file a list of their branch offices with the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, 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 Exchange 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

<sup>10</sup> 15 U.S.C. 78q-1.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>12</sup> 17 CFR 240.19b-4(f)(1).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>14</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.