

### *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, as amended, has been filed by the Exchange pursuant to section 19(b)(3)(A) of the Act<sup>16</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>17</sup> The Exchange requests that the Commission waive the 5-day notice and 30-day pre-operative requirements contained in Rule 19b-4(f)(6)(iii)<sup>18</sup> because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time frame as the Commission may designate. The Exchange believes that good cause exists to grant such waivers because of the importance of short sale regulation to the protection of investors. The Exchange will implement the proposed rule change immediately so that they will be in effect on the operative date of the applicable provisions of Regulation SHO.

The Commission believes that waiving the 5-day notice and 30-day pre-operative delay is consistent with the protection of investors and the public interest. The Commission notes that proposed rule change being made herein simply conforms the Exchange's rules to the requirements of Regulation SHO under the Act. No new rules, policies or procedures are being proposed other than as required by Regulation SHO. The Commission believes that accelerating the operative date of the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. For these reasons, the Commission designates the proposed

rule change as effective and operative immediately.

At any time within 60 days of the filing of such proposed rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate 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-Amex-2004-104 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-104. 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 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 inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-Amex-2004-104 and should be submitted on or before January 28, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-20 Filed 1-6-05; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50952; File No. SR-CHX-2004-42]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Short Sales of Securities**

December 30, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 21, 2004, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rule change as described in items I and II below, which Items have been prepared by the CHX. 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 CHX proposes to amend its rules to eliminate and modify provisions relating to short sales of securities, where those provisions are inconsistent with, or different from, the requirements of Regulation SHO.<sup>3</sup> The text of the proposed rule change is available for viewing at the places specified in item IV below.

<sup>19</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.

<sup>3</sup> See Release No. 34-50103, File No. S7-23-03, 69 FR 48008 (August 6, 2004) (the "Adopting Release"), and accompanying orders: Release No. 34-50104 (July 28, 2004), 69 FR 48032 (August 6, 2004) and Release No. 34-50747 (November 29, 2004), 69 FR 70480 (December 6, 2004).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

## 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. The CHX 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 Changes

#### 1. Purpose

The Commission has adopted new Regulation SHO, which provides new comprehensive regulation of short sales.<sup>4</sup> Among other things, this new series of rules provides new definitions, sets out uniform locate and delivery requirements for broker-dealers and establishes a procedure to allow the Commission to suspend temporarily the operation of the current "tick" test or short sale price test for specified securities.<sup>5</sup>

Because of the new comprehensive regulation provided by Regulation SHO, the Exchange believes that it is important to delete, from its rules, provisions that regulate the short selling of securities.<sup>6</sup> Specifically, the Exchange seeks to delete, from its rules: (1) Sections (b) and (c) of Article IX, Rule 17 (relating to locate and delivery requirements and the "bona fide" market making exemption from the short sale rule); and (2) Rules 11 and 12 of Article XXI (relating to long sales and mandatory stock borrowing). By deleting these rules, the Exchange seeks to ensure that its regulation of short sales is not inconsistent with, or different from, the provisions of Regulation SHO. Indeed, these rule changes would leave one primary provision relating to short sales in the Exchange's own rules—a provision that

requires members to effect short sales in accordance with the SEC's short sale rules.<sup>7</sup>

#### 2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.<sup>8</sup> In particular, the proposed changes are consistent with section 6(b)(5) of the Act, because they would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by providing for a uniform set of rules to regulate the short selling of securities.

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

The Exchange does not believe that the proposed rule changes will impose any inappropriate burden on competition with respect to the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments Received From Members, Participants or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing proposed rule change has been filed with the CHX pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup> The CHX requests that the Commission waive both the 5-day notice and the 30-day pre-operative requirements contained in Rule 19b-4(f)(6)(iii).<sup>11</sup> The CHX has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and

(iii) does not become operative for 30 days from the date it was filed, or such shorter time as the Commission may designate. The CHX believes good cause exists to grant such waivers because of the importance of short sale regulation to the protection of investors. The CHX will implement the foregoing proposed rule change immediately.

The Commission believes that waiving the 5-day notice and the 30-day pre-operative delay is consistent with the protection of investors and the public interest. The Commission believes that accelerating the operative date does not raise any new regulatory issues, significantly affect the protection of investors or the public interest or impose any significant burden on competition. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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 proposal 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 No. SR-CHX-2004-42 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File No. SR-CHX-2004-42. 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 Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

<sup>4</sup> See the Adopting Release.

<sup>5</sup> See Rule 200 (definitions); Rule 203 (uniform locate and delivery requirements) and Rule 202T (allowing the suspension of short sale rules in specified securities) set forth in the Adopting Release.

<sup>6</sup> The Exchange has not sought to amend the substantive requirements of a provision relating to short sales of odd-lots, except to add an interpretation confirming that the rule does not apply when the SEC has suspended the application of the rule as permitted by Regulation SHO. In the coming months, the Exchange plans to study the scope of this rule and to determine what changes, if any, should be made to its requirements.

<sup>7</sup> The Exchange seeks to amend the current rule text of this provision to specifically refer to Regulation SHO. See Article IX, Rule 17(a).

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> Under subparagraph (f)(6)(iii) of Rule 19b-4, the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. See 17 CFR 240.19b-4(f)(6)(iii).

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 changes 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 inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. 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 No. SR-CHX-2004-42 and should be submitted on or before January 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-22 Filed 1-6-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50955; File No. SR-FICC-2004-05]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend Rules Relating to the Participants Fund Deposit Requirements of Its Mortgage-Backed Securities Division

January 3, 2005.

#### I. Introduction

On March 3, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on March 11, 2004, amended proposed rule change File No. SR-FICC-2004-05 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposed rule change was published in the **Federal Register** on November 22, 2004.<sup>2</sup> No comment letters were received. For the reasons discussed below, the

Commission is now granting approval of the proposed rule change.

#### II. Description

The proposed rule change amends the rules of FICC's Mortgage-Backed Securities Division ("MBSD") to eliminate the basic deposit component of the Participants Fund deposit requirement for participants that are registered with the Commission as registered investment companies ("RICs") pursuant to the Investment Company Act of 1940.<sup>3</sup>

In 2003, FICC received a no-action letter<sup>4</sup> from the Commission's Division of Investment Management ("IM") stating that IM would not recommend to the Commission enforcement action under Section 17(f) of the Investment Company Act of 1940 against any RIC or its custodian if the RIC or its custodian placed the RIC's cash and/or securities in the custody of the MBSD for purposes of meeting the Participants Fund requirements imposed by the MBSD. IM's no-action letter was based upon the fact that the main portions of the MBSD's Participants Fund, the "minimum market margin differential deposit" and the "market margin differential deposit," are intended to benefit the non-defaulting participants of the MBSD because these portions are intended to provide assurances that each participant's contributions to the Participants Fund will be adequate to satisfy all open commitments recorded with the MBSD. In contrast, the remaining portion of the Participants Fund, the "basic deposit," is designed to protect FICC by ensuring that each participant's fees owing to the MBSD will be paid if the participant is unable to meet such fee obligations.

In granting no-action relief to FICC, IM staff relied upon FICC's representation that RICs would be exempt from the basic deposit requirement. FICC determined that this representation would not subject it to undue risk because the basic deposit is a relatively minimal amount and because this exemption affects very few participants.<sup>5</sup> The management of FICC returned the basic deposits posted by its RIC clearing members under perceived authority given to it under Article IV, Rule 1, Section 3 of its Rules. FICC

<sup>3</sup> 15 U.S.C. 80a-1.

<sup>4</sup> No-Action Letter under the Investment Company Act of 1940—Section 17(f) and Rule 17f-4, to Fixed Income Clearing Corporation (March 13, 2003).

<sup>5</sup> Currently, the basic deposit is determined semiannually and is the greater of (a) \$1,000 or (b) the participant's average monthly bill (per account) with a maximum of \$10,000. The MBSD currently has only two RIC clearing members.

nonetheless believes it would be prudent to expressly state in the MBSD Rules that RICs are exempt from the basic deposit requirement.<sup>6</sup>

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.<sup>7</sup> The Commission finds that FICC's proposed rule change is consistent with this requirement because by exempting RICs from its basic deposit requirement, FICC is enabling RICs to become participants while still doing so in a manner that allows FICC to safeguard the securities and funds in its custody or control or for which it is responsible.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act 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-2004-05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-32 Filed 1-6-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50949; File No. SR-NSCC-2004-10]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Regulatory Reporting Transmission Agreements With Self-Regulatory Organizations

December 30, 2004

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on

<sup>6</sup> FICC will also state in the MBSD's Schedule of Charges that the basic deposit does not apply to RICs.

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

<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>12</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. 50665 (November 15, 2004), 69 FR 67972.