

replace it with a requirement that specialists use reasonable diligence to ascertain the best available price for the security so that the resultant execution price is as favorable to the order sender as possible under prevailing market conditions. The new rule sets out factors that will be considered by the CHX in determining whether the specialist used reasonable diligence. On December 14, 2004, the CHX filed Amendment No. 1 to its original submission. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 22, 2004.³ The Commission received no comment letters with respect to the proposal.

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ which requires, among other things, that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specialists who execute market and marketable limit orders must, among other things, satisfy their duty of best execution by executing customer trades at the most favorable terms reasonably available under the circumstances. As amended, Article XX, Rule 37 will require specialists to use reasonable diligence to find the best available price for the security so that the resultant execution price is as favorable to the order sender as possible under prevailing market conditions. Furthermore, although CHX specialists no longer would be explicitly required to execute eligible orders at the NBBO, if the amended standard results in specialists effecting orders at a price worse than the NBBO, this information would be reflected in the statistics that the CHX must produce pursuant to Rule 11Ac1-5.⁶ Broker-dealers that route orders to the CHX would have to consider this information in connection with their duty to obtain best execution on behalf of their customers.

In addition, the Commission notes that the Exchange has committed to continue surveillance over order

executions to ensure that specialists are using reasonable diligence to find the best available price for their customers. The Commission expects that such surveillance will be proactive and that meaningful disciplinary action will be taken against specialists found to have violated the rule.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, Section 6(b)(5) of the Act.⁷

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-CHX-2004-03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52085; File No. SR-FICC-2005-13]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Procedure for Fine Waivers and To Make Other Technical and Administrative Amendments

July 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 15, 2005, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The purpose of the proposed rule change is to amend the: (1) Government Securities Division ("GSD") and Mortgage-Backed Securities Division ("MBSD") rules to allow the

Membership and Risk Management Committee ("Committee") to delegate fine waiver decisions to management while retaining the ability to override management's decision; (2) GSD and MBSD rules to eliminate the automatic placement on the Watch List of FICC members who fail to notify FICC within two business days of first learning of their non-compliance with FICC's membership standards; (3) MBSD rules to broaden the reference to "net worth;" (4) MBSD rules by adding a confidentiality clause; and (5) GSD rules to make a technical change by moving an incorrectly placed "and."

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 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Management Waiver of Fines

Currently, pursuant to GSD Rule 37 ("Hearing Procedures"), Section 1 ("General") and MBSD Article V ("Miscellaneous"), Rule 3 ("Fines and Other Sanctions"), each time a member requests that an assessed fine be waived, FICC management makes a determination to accept or reject the waiver request based on a review of the circumstances leading to the disputed fine. FICC management then presents its determination to the Committee for ratification at its next regularly scheduled meeting. Final determinations by the Committee may be appealed according to the GSD and MBSD rules.

The need for Committee approval of management decisions with respect to fine assessments delays final decisions for members because the Committee only meets approximately every two months. The Committee has routinely agreed with management's decisions regarding fine waivers. For these reasons, the Committee at this time feels comfortable delegating decisions on fine waiver requests to management.

² The Commission has modified the text of the summaries prepared by FICC.

³ See Securities Exchange Act Release No. 50865 (December 16, 2004), 69 FR 76804.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 240.11Ac1-5.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

Management will continue to inform the Committee at each regularly scheduled meeting of those waivers approved or denied by management. The Committee will retain the ability to override management's decision on any waiver granted. Each member will continue to have the opportunity to avail themselves of the formal hearing process contained in the GSD and MBSD rules.

2. Failure To Notify of Non-Compliance With Membership Standards

Members that have fallen out of compliance with a stated membership standard are required to notify FICC within two business days of first learning of their non-compliance pursuant to GSD Rule 3 ("Financial Responsibility, Operational Capability, and Other Membership Standards of Comparison-Only Members and Netting Members"), Section 5 ("General Continuance Standards") and MBSD Article III ("Participants"), Rule 1 ("Requirements Applicable to Participants and Limited Purpose Participants"), Section 17 ("Additional Assurances"). Failure to timely notify FICC results in a \$1,000 fine and in the member firm being placed on FICC's internal Watch List.

FICC's Watch List was created to isolate firms that may present an increased credit risk to FICC. FICC believes it is unnecessary to automatically put all non-compliant firms that fail to timely notify FICC on the Watch List because many of these firms are highly creditworthy and do not warrant monitoring from a credit risk perspective. However, FICC will continue to assess a fine against those members that fail to timely notify FICC of their non-compliance with membership standards.

3. MBSD Minimum Financial Requirements

MBSD Article III ("Participants"), Rule 1 ("Requirements Applicable to Participants and Limited Purpose Participants"), Section 2 states that FICC may use various financial indicia to determine if clearing members meet minimum financial requirements. However, the rules also state that for all members other than brokers, the minimum financial requirement is \$10 million in "net worth." The reference to "net worth" needs to be broadened because the "net worth" criterion is not always applicable to the various types of MBSD applicants and members. For example, FICC looks at net asset value for mutual fund members. FICC proposes to modify the MBSD rules to take into account these different criteria.

In addition FICC is making a technical change to Article III, Rule 1, Section 2. The rule states that financial indicia considered by FICC would include but is not limited to both "net capital" and "regulatory net capital." Because these terms refer to the same criterion, references to "net capital" will be changed to "liquid capital." The reference to "regulatory net capital" will be retained.

4. MBSD Confidentiality Provision

The MBSD is adding a confidentiality provision, new Section 8 ("Confidentiality"), to Article VIII ("EPN Users"), Rule 1 ("Requirements Applicable to EPN Users") of the EPN rules. While the MBSD has always kept EPN user information confidential, FICC believes it is appropriate to amend the rules to reflect current practice. Both the GSD and the MBSD have a confidentiality provision in their respective rules, and FICC will mirror these provisions for purposes of the EPN rules.

5. Technical Change to GSD Rules

GSD is making a technical change to Rule 11 ("Netting System"), Section 2 ("Eligibility for Netting") to correct a grammatical error caused by an incorrectly placed "and."

The proposed rule change is consistent with the requirements of Section 17A of the Act³ and the rules and regulations thereunder applicable to FICC because it assures the safeguarding of securities and funds in its custody or control or for which it is responsible by clarifying rules for applicants and members. As a result, FICC's ability to maintain a financially and operationally sound participant base should be enhanced.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact on 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

No written comments relating to the proposed rule change have been solicited or received. FICC will notify the Commission of any written comments received by FICC.

³ 15 U.S.C. 78q-1.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act⁴ and Rule 19b-4(f)(4)⁵ thereunder because the proposed rule change effects a change in an existing service of FICC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of FICC or for which it is responsible and (ii) does not significantly affect the respective rights of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, 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. Please include File Number SR-FICC-2005-13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-FICC-2005-13. 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

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(4).

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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at <http://www.ficc.com>. 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-2005-13 and should be submitted on or before August 17, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52065; File No. SR-FICC-2005-12]

Self Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Interpretation of a Rule Change Submission and Making Certain Technical Changes

July 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 20, 2005, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change and on July 13, 2005, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FICC. 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

FICC proposes to clarify the meaning of the narrative of a prior FICC rule change submission and to make

technical rule changes to the rules of its Government Securities Division ("GSD") and the Mortgage-Backed Securities Division ("MBSD").

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 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. FICC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.²

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

On March 16, 2005, the Commission approved an FICC rule filing that, among other things, established new minimum financial requirements for netting and clearing members in both Divisions.³ Specifically, members that use U.S. generally accepted accounting principles ("GAAP") to prepare their financial statements continue to be required to meet the minimum financial requirements that were in the rules prior to the rule change. Members that use a different kind of GAAP must meet minimum financial requirements that are 1½, 5, or 7 times greater than the financial requirements for users of U.S. GAAP, depending on the type of GAAP used by the member.

FICC is concerned that the narrative of FICC's rule filing submission was phrased in a way that might be confusing. For example, the rule filing narrative stated that a member that uses UK GAAP would have to meet a minimum financial requirement of "a premium of 1½ times the existing requirement." FICC is concerned that the use of the term "premium" could be misinterpreted to mean that the minimum financial requirement of such a member would be the total of the requirement for a user of U.S. GAAP plus 1½ times that requirement. FICC wishes to clarify that the new financial requirement for such members is 1½ times the U.S. GAAP requirement, as was correctly and accurately worded in the text of each Division's rules and the

narrative of the Commission's order approving the rule change.

In addition, FICC believes that the fine schedule for failure to timely provide required information to FICC does not adequately reflect the fact that members will be fined by FICC for not meeting the information requirements contained in GSD Rule 2, Sections 5 and 6 and MBSD Rule 1, Article II, Sections 10 and 12. While the fine schedule refers to the correct rule sections, it only refers to financial and regulatory reports, whereas those sections contain requirements to submit other types of information such as certain notifications, legal opinions, and updates to legal opinions. Members have been notified both in the relevant rule filings and in important notices that they will be fined if they do not timely submit this other type of required information as well. FICC proposes to change the fine schedule of each division to clearly reflect this.

FICC is also deleting provisions in GSD's rules relating to DK functionality for bilateral comparison because this functionality was never implemented. Lastly, FICC is correcting certain alpha-numerical references within GSD's rules.

FICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it clarifies FICC's rules and makes necessary technical corrections.

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

FICC does not believe that the proposed rule change will 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

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission if it receives any written comments.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁴ and Rule 19b-4(f)(1)⁵ thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by FICC.

³ Securities Exchange Act Release No. 51385, 70 FR 14736 (Mar. 23, 2005) [File No. SR-FICC-2004-14].

⁴ 15 U.S.C. 78s(b)(3)(A)(i).

⁵ 17 CFR 240.19b-4(f)(1).