

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.*

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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.*

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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.

December 16, 2004, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on December 27, 2004, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

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

The proposed rule change would permit NSCC to provide one or more data transmission services to permit members and others to meet regulatory reporting requirements imposed by self-regulatory organizations.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

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

Since 1995, NSCC has provided, as an accommodation to its members, a service which permits its members to submit trade data for forwarding to the Municipal Securities Rulemaking Board ("MSRB") in order to permit its members to meet MSRB regulatory requirements. To date, NSCC's rules have been silent with respect to the service. The MSRB has asked NSCC to expand the service and to provide qualifying non-members with the ability to be able to submit data to NSCC for forwarding to the MSRB to meet regulatory requirements.

With the introduction of a service for non-members of NSCC, NSCC believes that it is important to clarify in its rules that NSCC is providing these services on a non-exclusive basis as an accommodation to the industry to

alleviate costs. As such, NSCC is proposing to add new Rule 63 that would cover the existing service, the requested expansion of the service, and any other similar service requested of NSCC by any other self-regulatory organization.<sup>3</sup>

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it sets forth the terms that will govern arrangements whereby NSCC enters into an agreement with a self-regulatory organization to facilitate regulatory reporting by industry participants to meet requirements imposed by self-regulatory organizations. As such, the proposed rule change is designed to (i) promote the prompt and accurate clearance and settlement of securities transactions, (ii) protect investors and the public interest, and (iii) assure the safeguarding of securities and funds for which NSCC is in control.

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

NSCC does not believe that the proposed rule change 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 change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

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 which are in its custody or control or for which it is responsible.<sup>4</sup> The proposed rule change, by clarifying the rights and obligations of NSCC and the users of any of its regulatory

reporting data transmission services, is designed to protect NSCC and its members from any unnecessary financial risks. Accordingly, the proposed rule change should help to assure the safeguarding of securities and funds which are in NSCC's custody or control or for which it is responsible.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission recently approved two proposed rule changes filed by the MSRB that permit the MSRB to require dealers to submit transaction reports within 15 minutes of the time of trade.<sup>5</sup> This requirement will become effective in January 2005 and will be facilitated by NSCC. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication because by so approving NSCC will be able to provide data transaction trade submission services to non-members of NSCC by the MSRB's January 2005 implementation date.

### **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-NSCC-2004-10 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-NSCC-2004-10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

<sup>3</sup> Rule 63, SRO Regulatory Reporting, reads as follows:

The Corporation may provide one or more data transmission services to permit members and others to meet regulatory reporting requirements imposed by self-regulatory organizations, as defined in the Securities Exchange Act of 1934. To the extent that members or others use any such service they shall be bound by the terms of any agreement between the Corporation and any self-regulatory organization with respect to each such service. Entities which are not members shall be required to enter into such agreements as determined by the Corporation in order to use such services.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> Securities Exchange Act Release Nos. 50294 (August 31, 2004), 69 FR 54170 (September 7, 2004) (Order approving a proposed rule change relating to amendments to the MSRB's Rule G-12(f) on Automated Comparison and G-14 on Transaction Reporting and relating to the implementation of a facility for real-time transaction reporting and price dissemination) and 50820 (December 8, 2004), 69 FR 74553 (December 14, 2004) [File No. SR-MSRB-2004-06] (Order approving a proposed rule change to create a real-time transaction price service and to propose an annual subscription fee).

<sup>2</sup> The Commission has modified the text of the summaries.

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 NSCC and on NSCC's Web site at <http://www.nsc.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-NSCC-2004-10 and should be submitted on or before January 28, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50942; File No. SR-NYSE-2004-63]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. To Amend Exchange Rules Relating to the Return of Membership Certificates, Notice and Return of Exchange-Issued Identification Cards, and Minor Violations of Rules

December 29, 2004.

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 November 1, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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. On December 15, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On December 23, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to: (1) Delete the requirement in NYSE Rule 343(d) to return certificates of membership upon termination of customer offices or status as a member organization; (2) add NYSE Rule 35.80 to require members and member organizations to notify the Exchange's Security Office and surrender Exchange-issued identification cards within 24 hours of all employee terminations, re-assignments to non-Floor duties, or cancellations of such identification cards; (3) rescind NYSE Rule 412(g), which currently allows the Exchange to impose fees of up to \$100 per securities account per day for violations of NYSE Rule 412; and (4) enable violations of proposed new NYSE Rule 35.80 to be administered through the Exchange's minor rule violation plan (NYSE Rule 476A).

The text of the proposed amendments is set forth below. Brackets indicate deletions; italics indicate additions.

\* \* \* \* \*

#### Rule 343

Offices—Sole Tenancy, Hours, Display of Membership Certificates

(a) to (c) unchanged  
(d) Members and member organizations maintaining customers' offices are required to display in each such office a certificate of membership provided by the Exchange. Such certificate shall be at all times the

<sup>3</sup> See Form 19b-4 dated December 15, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange included current rule text that was omitted from the original rule filing and made technical changes to the rule text. Amendment No. 1 replaced the original filing in its entirety.

<sup>4</sup> See Partial Amendment dated December 23, 2004 ("Amendment No. 2"). In Amendment No. 2, the Exchange: (i) Submitted the proposed rule text changes in an Exhibit 4, which was inadvertently omitted from Amendment No. 1; (ii) changed "reassignment" to "re-assignment" in proposed NYSE Rule 35.80(3); and (iii) corrected typographical errors made in the original rule filing and Amendment No. 1 with respect to current rule text.

property of the Exchange[, and every such certificate shall be returned upon termination of the office or of the status as a member organization].

\* \* \* \* \*

#### Rule 35

Floor Employees To Be Registered

No employee of a member or member organization shall be admitted to the Floor unless he is registered with, qualified by and approved by the Exchange, and upon compliance of both the employer and employee with such requirements as the Exchange may determine.

Supplementary Material

(Rule 35.10 through 35.70 unchanged)

.80 *Notifications to Security Office and Return of Exchange-Issued Identification Cards*

*In the event of:*

(1) *A Floor member's or employee's termination, or*

(2) *Cancellation of a member's or employee's Exchange-issued identification card prior to expiration, or*

(3) *A member or member organization's re-assignment of a Floor member or employee to non-Floor functions*

*Members and member organizations must notify the Exchange's Security Office of the termination, cancellation, or re-assignment, and must surrender the member's or employee's Exchange-issued identification card to the Exchange's Security Office, within 24 hours of the termination, cancellation, or re-assignment.*

\* \* \* \* \*

#### Rule 412

Customer Account Transfer Contracts

(a) to (f) unchanged

[(g) Unless an exemption has been granted pursuant to paragraph (f) of this rule, the Exchange may impose upon a member organization a fee of up to \$100 per securities account for each day such member organization fails to adhere to the time frames or procedures required by this rule and related published interpretations.]

\* \* \* \* \*

#### Rule 476A

Imposition of Fines for Minor Violation(s) of Rules

(a) to (e) unchanged.

<sup>6</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.