

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### 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-FINRA-2008-025 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-025. 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 Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.

Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2008-025 and should be submitted on or before August 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58128; File No. SR-FICC-2007-04]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Applicant and Member Disqualification Criteria

July 9, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 30, 2007, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change and on February 7, 2008, and March 19, 2008, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially 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

The proposed rule change would amend FICC's Government Securities Division's ("GSD") and Mortgage Backed Securities Division's ("MBSD") (collectively, "Divisions") rules concerning applicant and member disqualification criteria.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

#### 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.

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

The purpose of this filing is for FICC to amend GSD's and MBSD's rules concerning applicant and member disqualification criteria in order to make the Divisions' rules consistent with the rules of FICC's affiliated clearing agencies, the National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC"). The proposed rule changes cover the following areas:

##### 1. Management Consideration of Disqualification Criteria<sup>2</sup>

GSD's membership qualification rules currently require FICC's Board of Directors to determine whether the presence of certain negative factors affecting a membership application should constitute the basis for denying membership to such applicant. Information that might disqualify an applicant (referred to in GSD's rules as "disqualification criteria") include the applicant being subject to a statutory disqualification<sup>3</sup> or conviction of various crimes such as bribery. The disqualification criteria in GSD's rules similarly apply as standards for continued membership.

FICC proposes to change GSD's disqualification criteria to allow FICC's management, instead of FICC's Board, to determine whether the presence of a potential disqualifier should prevent an entity from obtaining or continuing membership in GSD. Such change would conform to the rules of MBSD, DTC, and NSCC, which allow such determinations to be made by management.

##### 2. Associated and Affiliated Persons

GSD's and MBSD's respective rules also apply certain applicant and

<sup>2</sup> GSD Rule 2A, Section 3(d).

<sup>3</sup> See 15 U.S.C. 78c(a)(39) (definition of "statutory disqualification").

member disqualification criteria to persons "associated" (in GSD's rules) or "affiliated" (in MBSD's rules) with the applicant or member firm. FICC states that it is not always practical for it to ascertain which individuals are "associated" or "affiliated" with a particular entity and therefore proposes to amend these rules to conform them to its internal surveillance procedures and make them consistent across both Divisions. Accordingly, references to persons "associated" or "affiliated" with the member or applicant would be changed to references to "controlling management," which will include those officers of the applicant or member that are currently screened by FICC's Risk Management department pursuant to internal procedures.<sup>4</sup> In addition, FICC proposes to add language to its rules that would require applicants to inform FICC as to any member of its controlling management that is or becomes subject to statutory disqualification.

### 3. Monitoring of Objective Disqualification Criteria

Under the proposal, GSD's disqualification criteria would be amended to reflect an approach that such criteria should be objectively and practically monitored. Specifically, FICC proposes to delete one disqualification criterion that refers to an applicant being subject to "closer than normal" surveillance by a regulatory body. FICC states that this event might not be reported in a regulatory background check.

In addition, MBSD's rules currently contain only two criteria that may be the basis for denial of a membership application, including: (i) An applicant's subjection to a statutory disqualification or similar order by another examining authority and (ii) an applicant or an associated person of the applicant making a misstatement of a material fact in connection with its membership application or thereafter. MBSD proposes to add GSD's remaining disqualification criteria, which would result in the Divisions' having identical disqualification criteria.

Finally, FICC proposes adding a provision to both Divisions' rules that would clarify FICC's right to deny membership to an applicant or member if FICC learns of any factor or circumstance that might impact the suitability of that particular applicant or member as a participant.

### 4. Additional Changes

FICC proposes to make the following changes to provide additional uniformity among the Divisions' rules, NSCC, and DTC:

- Adding to both Divisions' disqualification criteria violations of the Investment Company Act and Investment Advisers Act,<sup>5</sup> since those statutes apply to their current membership base.

- Amending GSD's definition of "self-regulatory organization" to include those entities that are foreign equivalents. The same definition for "self-regulatory organization" would be added to MBSD's rules.

- Removing the word "willful" from both Divisions' disqualification criteria concerning an applicant's or an applicant's controlling management's violation of the specified federal statutes or any rule or regulation promulgated thereunder. FICC believes that a violation of these provisions, whether or not willful, should be considered as a potential disqualification criterion.

- Deleting references in GSD's rules to Section 153 of Chapters 25 and 47 of Title 18 of the United States Code ("Code") because the crimes covered by these statutes (*i.e.*, embezzlement, forgery, false statements, etc.) are captured by the current disqualification criteria. References to those portions of the Code that deal with mail and wire fraud (Sections 1341, 1342 and 1343) would remain. This provision, as proposed, would also be added to MBSD's rules.

Conforming changes would be made to the cease to act provisions of GSD's rules (Rule 21, "Restrictions on Access to Services") in order to ensure consistency within the rules and across the Divisions.

FICC states that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder because they provide consistency and transparency with respect to the applicant and member disqualification criteria in the GSD and MBSD rules, thereby promoting the prompt and accurate clearance and settlement of securities transactions.

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

FICC believes that the proposed rule change does not 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 of any written comments it receives.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### 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 No. SR-FICC-2007-04 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-FICC-2007-04. 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

<sup>4</sup> Proposed GSD Rule 1 and MBSD Article I ("The term 'controlling management' shall mean the Chief Executive Officer, the Chief Financial Officer, and the Chief Operations Officer, or their equivalents, of an applicant of Participant.").

<sup>5</sup> 15 U.S.C. 80a-1 *et seq.* and 15 U.S.C. 80b-1 *et seq.*, respectively.

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

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 Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at FICC's principal office and on FICC's Web site at <<http://ficc.com/gov/gov.docs.jsp?NS-query=#rf>>. 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-FICC-2007-04 and should be submitted on or before August 6, 2008.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58129; File No. SR-ISE-2008-21]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by International Securities Exchange, LLC Relating to an Exchange Member's Conduct of Doing Business With the Public

July 9, 2008.

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 March 27, 2008, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which items have been substantially 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 is proposing to amend certain Exchange rules that govern an Exchange member's conduct of doing business with the public. Specifically, the proposed rule change would require members to integrate the responsibility for supervision of their public customer options business into their overall supervisory and compliance programs. In addition, the proposal would require members to strengthen their supervisory procedures and internal controls as related to their public customer options business. The text of the proposed rule change is available at ISE's Web site at <http://www.ise.com>, the Office of the Secretary, ISE, 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 Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

##### Purpose

##### I. Integration of Options Supervision

The purpose of the proposed rule change is to create a supervisory structure for options that is similar to that required by New York Stock Exchange, Inc. ("NYSE") Rule 342 and National Association of Securities Dealers, Inc. ("NASD") Rule 3010. The proposed rule change would also conform ISE rules to those of the Chicago Board Options Exchange ("CBOE") which has recently eliminated the requirement that members qualified to do a public customer business in options must designate a single person to act as a Senior Registered Options Principal ("SROP") for the member and that each such member designate a specific individual as a Compliance Registered

Options Principal ("CROP").<sup>3</sup> Instead, the rule requires members to integrate the SROP and CROP functions into their overall supervisory and compliance programs.

The SROP concept was first introduced during the early years of development of the listed options market. Previously, members were required to designate one or more persons qualified as Registered Options Principals ("ROPs") to have supervisory responsibilities with respect to the firms' options business. As the number of ROPs at larger firms began to increase, an additional requirement was imposed that firms designate one of their ROPs as the SROP. This was intended to eliminate confusion as to where the compliance and supervisory responsibilities lay by centralizing in a single supervisory officer overall responsibility for the supervision of a firm's options activities.<sup>4</sup> Subsequently, following the recommendation of the Commission, the options exchanges required firms to designate a CROP to be responsible for each firm's overall compliance program with respect to its options activities.<sup>5</sup> The CROP could be the same person designated as a SROP.

Since the SROP and CROP requirements were first imposed, the supervisory function with respect to options activities of most securities firms has been integrated into the matrix of supervisory and compliance functions in respect of the firms' other securities activities. This not only reflects the maturity of the options market, but also recognizes the ways in which the uses of options themselves have become more integrated with other securities in the implementation of particular strategies. By permitting supervision of a firm's options activities to be handled in the same manner as the supervision of its securities and futures activities, the proposed rule change would ensure that supervisory responsibility over each segment of a firm's business is assigned to the best qualified persons in the firm, thereby enhancing the overall quality of supervision and compliance.

The proposed rule change would allow firms the flexibility to assign such supervisory and compliance responsibilities, which formerly resided with the SROP and/or CROP, to more than one individual. For example, the proposed rule change would permit a

<sup>3</sup> See Securities and Exchange Act Release No. 56492 (September 21, 2007), 72 FR 54952 (September 27, 2007) (SR-CBOE-2007-106).

<sup>4</sup> Securities and Exchange Commission, 96th Cong., 1st Sess., Report of the Special Study of the Options Markets (Comm. Print 1978) 316 fn. 11.

<sup>5</sup> *Id.* at p. 335.

<sup>7</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.