

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50642; File No. SR-FICC-2004-06)

November 5, 2004

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Institute Fines for Late Payment of Cash Obligations and Margin and to Institute Informal Hearing Procedures for Fine Disputes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on March 18, 2004, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) and on April 16, 2004, amended 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 institute at the Mortgage Backed Securities Division (“MBSD”) (i) fines for the late payment of cash obligation items<sup>2</sup> and margin deficits and (ii) informal hearing procedures for disputed MBSD fines.

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

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

<sup>2</sup> Cash obligation items are cash receivables/payables that have been assigned a due date by the MBSD.

below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

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

The purpose of the proposed rule change is to institute at the MBSB (i) fines for the late payment of cash obligation items and margin deficits and (ii) informal hearing procedures for disputed MBSB fines.

1. Fines for Late Payments

The MBSB has for some time imposed fees in order to promote greater compliance with its cash obligation and margin payment deadlines.<sup>4</sup> Fees differ from fines in that fines must be reported by FICC to the Commission. FICC management believes that, consistent with the practice of the Government Securities Division ("GSD") of FICC, assessments for late payment of margin and cash obligation items should be categorized as fines. Management believes that this change will provide a greater incentive for participant compliance with appropriate payment timeframes which will reduce risk to all MBSB participants.

2. Procedures Relating to Disputed Fines

The rules of the MBSB currently contain procedures whereby a participant can dispute any fine assessment through a formal appeal process. FICC believes that, consistent with the

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<sup>3</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>4</sup> Currently, the MBSB rules state that failure to pay a cash settlement obligation will result in the assessment of a fine. However, the MBSB Schedule of Charges refers to such charges as "fees," and they have been processed as fees by MBSB in the past.

practice of the GSD, the fine process would be more effective and equitable and would provide participants with additional due process if an initial less formal dispute process was also included in MBSD's rules. The initial dispute process would be utilized by participants prior to availing themselves of the formal appeal process. A participant that becomes subject to a fine would have the opportunity within seven calendar days to dispute the fine by explaining in writing any mitigating circumstances that contributed to the participant's infraction and to request a fine waiver. Based on such written documentation provided by the participant, management would have the discretion to waive a fine if it believed that sufficient mitigating circumstances had been shown by the participant. If management waives a fine, it would have to inform the Membership and Risk Management Committee ("Committee") at the next regularly scheduled Committee meeting and would have to explain management's reasons for doing so. The Committee would then have the opportunity to overrule management's action with respect to the waiver. If management chooses to not waive a fine or if its waiver is overruled by the Committee, the participant would have the right to pursue the formal hearing process currently provided for in the FICC Rules.

FICC is proposing to make parallel changes with respect to the fine dispute process to the MBSD's EPN rules.

In addition, FICC is proposing certain technical changes to the MBSD's Schedules of Charges to (i) delete references to "MBSCC" and replace them with references to "MBSD" and (ii) eliminate obsolete fees which are no longer being charged by the MBSD.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to FICC because it is designed to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions by (i) encouraging participants to make timely payments of cash obligation items and margin to MBSD and (ii) clearly setting forth in FICC's rules procedures for management's review and possible waiver of fines which should provide members with a more efficient and less burdensome method for the possible resolution of disputed fines before a full hearing takes place.

(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

Written comments relating to the proposed rule change have not yet 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

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

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<sup>5</sup> 15 U.S.C. 78q-1.

(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-FICC-2004-06 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-FICC-2004-06. 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 FICC and on FICC's Web site at [www.ficc.com](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-2004-06 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Margaret H. McFarland  
Deputy Secretary

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

