SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50965; File No. SR-FICC-2004-06)

January 5, 2005

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

I. Introduction

On March 18, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on April 16, 2004, amended proposed rule change SR-FICC-2004-06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the Federal Register on November 15, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

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

1. Fines for Late Payments

The MBSD has for some time imposed fees in order to promote greater compliance with its cash obligation and margin payment deadlines.[3] Fees differ from fines in that fines must be

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 50642 (November 5, 2004), 69 FR 65662.

[3] Currently, the MBSD rules state that failure to pay a cash settlement obligation will result in the assessment of a fine. However, the MBSD Schedule of Charges refers to such charges as "fees," and they have been processed as fees by MBSD in the past.

reported by FICC to the Commission. FICC 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. FICC believes that this change will provide a greater incentive for participant compliance with appropriate payment timeframes which will reduce risk to all MBSD participants.

2. Procedures Relating to Disputed Fines

The rules of the MBSD currently contain procedures whereby a participant can dispute any fine assessment through a formal appeal process. FICC believes that, consistent with the practice of the GSD, the fine process will be more effective and equitable and will provide participants with additional due process if an initial less formal dispute process is also included in MBSD's rules. The initial dispute process will be utilized by participants prior to availing themselves of the formal appeal process. A participant that becomes subject to a fine will 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 will have the discretion to waive a fine if it believes that sufficient mitigating circumstances have been shown by the participant. If management waives a fine, it will have to inform the Membership and Risk Management Committee ("Committee") at the next regularly scheduled Committee meeting and will have to explain its reasons for doing so. The Committee will 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 will have the right to pursue the formal hearing process currently provided for in the MBSD's Rules.

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

In addition, FICC proposed 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.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to remove impediments to the perfection of a national system for the prompt and accurate clearance and settlement of securities transactions.[4] The Commission finds that FICC's proposed rule change is consistent with this requirement 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 MBSD's rules the informal procedures for disputing 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.

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.

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[4] 15 U.S.C. 78q-1(b)(3)(F).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-FICC-2004-06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

J. Lynn Taylor
Assistant Secretary

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5 17 CFR 200.30-3(a)(12).