

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53396; File No. SR-FICC-2005-17)

March 2, 2006

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Assumption of Blind Brokered Fails by its Government Securities Division

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on September 30, 2005, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change and on November 28, 2005 amended the propose rule change that is 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 proposed rule change would clarify the practice of the Government Securities Division (“GSD”) of FICC of assuming certain blind brokered repurchase transaction (“repo”) fails and of obtaining financing in connection with such assumption.

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).

below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</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 clarify the practice of the GSD of FICC of assuming certain blind brokered repo fails and of obtaining financing as necessary in connection with such assumption. The settlement of the start leg of a same-day starting repo has always been and continues to be processed outside of the GSD. In the evening of the day of a same-day starting brokered repo, FICC will assume responsibility from the broker for settlement of such start leg if the repo dealer has not delivered securities to the broker to start the repo (*i.e.*, the start leg has failed). This may involve the receipt of securities from the repo dealer for redelivery to the reverse repo dealer or the settlement of the start leg may be effected by netting or pair-off of the settlement obligations arising from the start leg against the settlement obligations arising from the close leg of the same or another repo.

FICC will also assume a blind brokered repo fail that arises in the close leg of a blind brokered repo transaction. For example, if the start leg of the transaction settles outside of FICC in the normal course but one side of the close leg does not compare (for any reason that would cause a trade to not compare such as erroneous trade data submitted by one or both of the parties), the broker will wind up with a net settlement position rather than netting flat. If that transaction fails to settle, FICC will assume the broker's fail.

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

FICC assumes the fails in these instances in order to decrease risk.<sup>3</sup> By assuming the fail, FICC removes the broker, which acts as an intermediary and which expects to net out of every transaction and not have a settlement position, from the settlement process. FICC is proposing to add a provision to its rules to expressly provide for this practice and therefore to make its rules consistent with its current and longstanding practice.<sup>4</sup>

In the assumption of such broker fails, the need for financing might arise. For example, such as if the repo dealer delivered securities at the close of the securities Fedwire and if the broker was unable to deliver them to the reverse repo dealer. The GSD's rules already contain a provision, Section 8 of Rule 12, that addresses the GSD's need to obtain financing in general. This provision contemplates the need for financing in order to allow the GSD to facilitate securities settlement generally. It is important to note that such financing is part of the GSD's normal course of business, and the GSD's ability to obtain such financing is necessary for it to be able to complete securities settlement. Section 8 of Rule 12 provides that if FICC deems it appropriate to obtain financing to provide its securities settlement services, FICC may create security interests in eligible netting securities delivered by a netting member in order to obtain such financing. The provision requires that members not take any action to adversely affect this process. The provision also states that such security interests may be created to obtain financing in an amount greater than the obligation of a member to FICC relating to such eligible netting securities. Thus, clearing fund securities may be used to collateralize such financing. Also,

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<sup>3</sup> FICC has engaged in the practice of assuming broker fails since the inception of its blind brokered repo service.

<sup>4</sup> The specific rule being added is Rule 19, Section 5, "Assumption of Blind Brokered Fails."

Section III.C of the GSD's fee structure provides the formula that the GSD will use to charge members for the cost of any financing obtained by the GSD.

FICC wishes to interpret Section 8 of Rule 12 and Section III.C. to apply to financing that might arise because of FICC's assumption of blind brokered fails. FICC does not believe that actual changes to the rules are necessary for this clarification.

FICC believes that the proposed change is consistent with Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to FICC because it clarifies FICC's rules for consistency with current practice and provides an interpretation of an existing rule.

(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-2005-17 in the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-FICC-2005-17. 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, 100 F Street, NE, Washington, DC 20549. Copies of such filings also will be available for inspection

and copying at the principal office of FICC and on FICC's Web site, [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-2005-17 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>

Nancy M. Morris  
Secretary

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