

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54570); File No. SR-FICC-2006-12

October 4, 2006

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Financial Responsibility, Operational Capability, Insolvency, and Ceasing to Act

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on June 15, 2006, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) and on September 22, 2006, amended the proposed rule change as 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 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”) rules relating to members’ or applicants’ financial responsibility, operational capability, and insolvency and FICC ceasing to act for members.

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.

¹ 15 U.S.C. 78s(b)(1).

FICC has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.²

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

1. Cease to Act and Insolvency Rules

In order to achieve greater legal and administrative consistency and efficiency, FICC proposes to harmonize GSD’s rules governing when FICC will cease to act for a member in a noninsolvency situation³ and in an insolvency situation⁴ with the rules of FICC’s affiliate, the National Securities Clearing Corporation (“NSCC”).⁵

Under the proposed rule change, GSD Rule 21 would be renamed “Restriction on Access to Services,” would address noninsolvency situations, and would be structured similar to NSCC Rule 46. While new Rule 21 would be triggered by essentially the same criteria that are contained in the current GSD rule,⁶ the new rule would expand the remedies that FICC could exercise beyond only “ceasing to act” or “ceasing to accept data” on behalf of the member. Specifically, FICC, after notifying and providing an opportunity to request a hearing to the member, would be able to suspend, prohibit, or limit a member’s access to one or more of FICC’s services.

² The Commission has modified the text of the summaries prepared by FICC.

³ GSD Rule 21.

⁴ GSD Rule 22.

⁵ The text of the proposed rules can be found on FICC’s Website at <<http://ficc.com/gov/gov.docs.jsp?NS-query=#rf>>.

⁶ Such triggers include the member failing to perform its obligations to FICC and FICC’s determination that the member is in or is approaching financial difficulty.

GSD Rule 22, which covers situations when a member becomes insolvent, would remain in its current form except that its close-out provisions would be amended and would be moved to a new Rule 22A. Rule 22A would set forth the procedures that FICC would follow when it ceases to act for a member pursuant to Rules 21 and 22. Under new Rule 22A, FICC would initiate the close-out process with respect to a member for which it has ceased to act for any reason permitted by its rules.⁷ In addition, the term “Cut-Off Time” for noninsolvency situations would be added to Rule 22A. Although this term is similar to the “Time of Insolvency” term currently used in Rule 22, a key difference between the terms is that members will be notified in advance of the “Cut-Off Time.”

The proposed rule change also makes technical changes to conform existing references to Rules 21 and 22 throughout FICC’s rules to the proposed rule changes described above.⁸

2. General Continuance Standards

FICC proposes to add new Rule 3, Section 5 to GSD’s rules and new Article III, Rule 1, Section 18 to MBSD’s rules, similar to NSCC Rule 15, that would enable FICC, when it deems necessary or advisable, to assure itself of a member’s or an applicant’s financial responsibility and operational capability. To assure itself, FICC could, but would not be limited to: restricting or modifying the member’s use of any or all of FICC’s services; requiring additional reporting by the member of its financial or operational condition; increasing the member’s clearing fund collateral; altering the proportions of cash, eligible netting securities, and letters of credit contributing to the member’s required clearing fund deposits; and prohibiting the member from

⁷ Currently, the close-out process applies only when FICC deems a member insolvent.

⁸ See Rules 1, 3A, 4, 6A, 14 and pending Rule 22A.

withdrawing excess clearing fund deposits.⁹

Because the proposed rule change would give FICC the general authority to require additional clearing fund collateral when FICC is seeking additional assurances from a member or applicant, the provisions in GSD's current Rule 4 that require the posting of additional collateral for specific circumstances would be deleted.

3. Technical Amendments

FICC proposes to make several technical amendments to GSD's and MBSD's rules. The terms "Board" and "Board of Directors" would be redefined to include a committee of FICC's Board of Directors that is acting under delegated authority of the Board. Accordingly, references to specific board committees throughout both divisions' rules would be replaced simply by the term "Board," which would include any such board committees.

FICC believes that the proposed rule change is consistent with the requirements of the Section 17A of the Act¹⁰ and the rules and regulations thereunder because it would enhance FICC's rules governing cease-to-act and insolvency situations and would strengthen FICC's ability to seek additional assurances from its members and as a result should help FICC safeguard funds and securities in its custody or control.

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.

⁹ These proposed actions are similar to those that FICC has proposed to undertake with respect to a member undergoing a wind-down in a rule filing pending with the Commission. SR-FICC-2006-06.

¹⁰ 15 U.S.C. 78q-1.

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, as amended, 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. Please include File No. SR-FICC-2006-12 on 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 No. SR-FICC-2006-12. 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 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 submission should refer to File No. SR-FICC-2006-12 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.¹¹

Nancy M. Morris
Secretary

¹¹ 17 CFR 200.30-3(a)(12).