

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69424; File No. SR-FICC-2013-01)

April 22, 2013

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change Amending the Mortgage-Backed Securities Division Fails Charge Rule to Reflect Recommendation of the Treasury Market Practice Group

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 12, 2013, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared 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 purpose of the proposed rule change is to amend the existing fails charge rule in FICC’s Mortgage-Backed Securities Division (“MBSD”) Clearing Rules in order to reflect the recent recommendation from the Treasury Market Practices Group (“TMPG”) relating to the removal of the resolution period for fails charges.³

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The text of the proposed rule change is provided as Exhibit 5 to this filing and is available at www.dtcc.com/downloads/legal/rule_filings/2013/ficc/SR_FICC_2013_01.pdf.

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 section (A), (B) and (C) below, of the most significant aspects of such statements.⁴

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

To address the persistent settlement fails in agency debt and mortgage-backed securities (“MBS”) transactions and to encourage market participants to resolve such fails promptly, the TMPG recommended in February 2012 that the MBS market impose a fails charge in an effort to reduce the incidence of delivery failures and support liquidity in the markets.⁵ MBSD amended Rule 12 (Fails Charges) of MBSD's Clearing Rules in March 2012 to reflect TMPG's recommendations.⁶ The fails charge for MBS transactions applies to certain trades settled in the MBSD central counterparty (“CCP”) (i.e., settlement of pools versus FICC involving failing agency MBS issued or guaranteed by Fannie Mae, Freddie Mac and Ginnie Mae.) Consistent with the TMPG's initial recommendation, MBSD's Rule 12 does not currently impose a fails charge if delivery occurs on either of the two business days following the contractual settlement date. The two business days are sometimes referred to as the “resolution period.”

⁴ The Commission has modified the text of the summaries prepared by FICC.

⁵ The TMPG is a group of market participants active in the treasury securities market sponsored by the Federal Reserve Bank of New York.

⁶ See Securities Exchange Act Release No. 66550 (March 9, 2012), 77 FR 15155 (March 14, 2012)(File No. SR-FICC-2008-01).

However, on March 1, 2013, the TMPG issued a new recommendation to remove the two-day resolution period from the current practice.⁷ The TMPG has advised that the revised recommendation should apply to transactions in agency MBS transactions entered into on or after July 1, 2013, as well as to transactions that were entered into prior to but remain unsettled as of July 1, 2013.

The purpose of this proposed rule change is to amend the existing fails charge rule to reflect TMPG's most recent recommendation. In order to maintain symmetry with the MBS marketplace, FICC is now proposing to amend MBSD's Rule 12 in order to remove the two-day resolution period provision from the rule. Consequently, an agency MBS settlement fail will be subject to a fails charge for each calendar day that the fail is outstanding, even if the delivery occurs on either of the first two business days following the contractual settlement date. FICC is also proposing that the proposed rule change will be effective as of July 1, 2013, in accordance with the TMPG's recommendation. All other provisions of the agency MBS fails charge rule, including the fails charge rate and trading practices, remain unchanged.

FICC believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it would facilitate the prompt and accurate clearance and settlement of securities transactions by discouraging persistent fails of agency MBS transactions in the marketplace.

(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.

⁷ Press Release, Federal Reserve Bank of New York, TMPG Revises Agency MBS Fails Charge Trading Practice (March 1, 2013)(available at www.newyorkfed.org/tmpg/03_01_2013_Fails_charges_press_release.pdf).

(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 changes have not 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 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove the 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. Please include file Number SR-FICC-2013-01 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-FICC-2013-01. 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 website (<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 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 website viewing and printing in the Commission's Public Reference Section, 100 F Street, N.E., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of FICC and on FICC's website at http://www.dtcc.com/downloads/legal/rule_filings/2013/ficc/SR_FICC_2013_01.pdf. 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-2013-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁸

Elizabeth M. Murphy
Secretary

⁸ 17 CFR 200.30-3(a)(12).