

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69708; File No. SR-FICC-2013-01)

June 6, 2013

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change to Amend the Mortgage-Backed Securities Division Rule to Reflect Recommendations of the Treasury Market Practice Group

I. Introduction

On April 15, 2013, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-FICC-2013-01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the Federal Register on April 29, 2013.³ The Commission received no comment letters. This order approves the proposed rule change.

II. Description

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 Treasury Market Practices Group (“TMPG”) recommended in February 2012 that the MBS market impose a fails charge.⁴ FICC’s Mortgage-Backed Securities Division (“MBSD”) amended Rule 12 (Fails Charges) of MBSD’s Clearing Rules in March 2012 to reflect TMPG’s

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 69424 (April 22, 2013), 78 FR 25115 (April 29, 2013).

⁴ The TMPG is a group of market participants active in the treasury securities market sponsored by the Federal Reserve Bank of New York.

recommendations.⁵ The fails charge for MBS transactions applies to certain trades settled in the MBS 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 did not impose a fails charge if delivery occurred on either of the two business days following the contractual settlement date. The two business days are sometimes referred to as the “resolution period.”

However, on March 1, 2013, the TMPG issued a new recommendation to remove the two-day resolution period from the current practice.⁶ 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. This rule change amends the existing fails charge rule to reflect TMPG’s most recent recommendation by removing 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 making the rule change effective as of July 1, 2013, in accordance with the TPMG’s recommendation. All other provisions of the agency MBS fails charge rule, including the fails charge rate and trading practices, remain unchanged.

⁵ See Securities Exchange Act Release No. 66550 (March 9, 2012), 77 FR 15155 (March 14, 2012)(File No. SR-FICC-2008-01).

⁶ 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).

III. Discussion

Section 19(b)(2)(C) of the Act⁷ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.⁸ The Commission finds that FICC's rule change should facilitate the prompt and accurate clearance and settlement of securities transactions because the rule change will discourage persistent settlement fails in agency debt and MBS transactions and encourage market participants to resolve such fails promptly.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly with the requirements of Section 17A of the Act, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-FICC-2013-01) be and hereby is approved.¹⁰

⁷ 15 U.S.C. 78s(b)(2)(C).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 15 U.S.C. 78s(b)(2).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹¹

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Deputy Secretary

¹⁰ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 17 CFR 200.30-3(a)(12).