

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62828; File No. SR-FICC-2010-02)

September 2, 2010

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change to Amend the Rules of the Government Securities Division and the Mortgage-Backed Securities Division to Change the Classification of U.S. Branches or Agencies of Non-U.S. Banks from Foreign to U.S. Members

I. Introduction

On June 24, 2010, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2010-02 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the Federal Register on July 19, 2010.<sup>2</sup> No comment letters were received on the proposal. This order approves the proposal.

II. Description

FICC will amend the Rules of its Government Securities Division ("GSD") and Mortgage Backed Securities Division ("MBSD") to classify as U.S. Members those Members of the GSD and MBSD that are U.S. Branches or agencies of non-U.S. Banks ("U.S. Branches"). GSD and MBSD Rules currently classify the membership of such U.S. Branches as "Foreign."

The classification of U.S. Branches as U.S. Members harmonizes FICC's Rules with the other clearing agency subsidiaries of The Depository Trust and Clearing Corporation, The Depository Trust Company ("DTC") and the National Securities Clearing Corporation

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 62478 (July 9, 2010), 75 FR 41908 (July 19, 2010).

("NSCC").<sup>3</sup> FICC also believes the rule change is appropriate because it reflects that U.S. Branches are regulated by a U.S. regulator or a state regulator. This means that the appropriate domestic regulator treats U.S. Branches as U.S. entities for most significant matters, and consequently an insolvency of such a member would be determined by applicable domestic "ring-fence" laws.<sup>4</sup> Under the Rule changes, such members will be treated as domestic members for all purposes under FICC's Rules and Procedures unless FICC states otherwise in its Rules.<sup>5</sup>

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act<sup>6</sup> and the rules and regulations thereunder applicable to FICC. In particular, the Commission believes that the amendments FICC is making to its Rules to will provide consistent treatment to all its Members that are regulated by a U.S. or state regulator and that are subject to a domestic insolvency regime are consistent with FICC's obligations under Section 17A(b)(3)(F),<sup>7</sup> which requires, among other things, that the rules of a clearing agency are

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<sup>3</sup> DTC and NSCC already classify U.S. branches or agencies of foreign banks as domestic Members. This is reflected in Section 2 of DTC's Policy Statements on the Admission of Participants and in Addendum O of NSCC's Rules titled "Admission of Non-U.S. Entities as Direct NSCC Members."

<sup>4</sup> In the United States, "ring-fencing" refers to the procedure for dealing with branches or agencies of insolvent foreign banks in the United States pursuant to which the federal or state regulator, as applicable, will seize and administer the local assets of an insolvent institution, with a preference for local creditors in a liquidation that is separate from the liquidation of the parent foreign bank as a whole.

<sup>5</sup> Such members will no longer be required to submit annual updates to their foreign legal opinions as currently required by FICC rules for non-U.S. entities unless FICC deems it necessary to address legal risk. Applicants in this category will however continue to be required to submit an initial foreign legal opinion on their home country law with their membership application.

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>8</sup> and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-FICC-2010-02) be, and hereby is, approved.<sup>10</sup>

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

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 17 CFR 200.30-3(a)(12).