

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51643; File No. SR-FICC-2005-01)

May 2, 2005

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Timely Notification of Significant Events that Effect a Change in Control of a Member or Could Have a Substantial Impact on a Member's Business or Financial Condition

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 6, 2005, 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 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 require certain FICC members to notify FICC when they experience an event that would effect a change in control of such member or could have a substantial impact on such member's business or financial condition.

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

¹ 15 U.S.C. 78s(b)(1).

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

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

Currently, FICC’s Government Securities Division’s (“GSD”) rules require a member to “promptly” inform FICC when they experience a “material change in control or financial condition.”³ FICC’s Mortgage-Backed Securities Division’s (“MBSD”) rules do not contain any similar requirements.

FICC believes that the GSD rule does not cover a broad-enough scope of events that FICC should be aware of in order to properly manage the risks that such events might pose to FICC and its membership. In addition, FICC believes that the current rule is not effectively enforceable because the terms “promptly” and “material change in control or financial condition” are not adequately defined.

Under the proposed rule change, GSD netting members and MBSD clearing members would be required to provide oral and written notification to FICC upon experiencing a “Reportable Event.” The term “Reportable Event” would be defined as an event that would effect a change in control of a GSD netting member or an MBSD clearing member or an event that could have a substantial impact on those types of member’s business or financial condition including, but not limited to: (a) material organizational changes including mergers, acquisitions, changes in corporate form, name changes, changes in the ownership of a netting or clearing member or its affiliates, and material changes in management; (b) material changes in business lines, including new business lines undertaken; and (c) status as a defendant in litigation

³ GSD Rule 3, Section 4.

which could reasonably impact the netting or clearing member's financial condition or ability to conduct business.⁴

In order to provide FICC with enough time to analyze the implications of a Reportable Event and to determine an appropriate course of action, FICC believes that it is important for it to learn of a Reportable Event as soon as possible. As such, a netting or clearing member must submit written notice to FICC at least 90 calendar days prior to the effective date of such Reportable Event unless the member demonstrates that it could not have reasonably done so and also provides oral and written notice to FICC as soon as possible. Failure to so notify FICC would result in a \$5,000 fine.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it should enhance FICC's ability to collect and evaluate the type of information that it needs to be aware of in order to properly manage risks and enforce its rules, thereby assuring the safeguarding of securities and funds for which FICC is in 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.

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 it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

⁴ A similar requirement was added as Addendum T to the National Securities Clearing Corporation's rules in 1998. Securities Exchange Act Release No. 40582 (Oct. 20, 1998), 63 FR 57346 (Oct. 27, 1998).

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 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-2005-01 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-FICC-2005-01. 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 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at <http://ficc.com/gov/gov.docs.jsp?NS-query=>>. 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-2005-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland
Deputy Secretary

⁵ 17 CFR 200.30-3(a)(12).