

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53061; File No. SR-FICC-2005-20)

January 5, 2006

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Impose a Surcharge on Participants Submitting Trade Data by Batch Method

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on October 28, 2005, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) and on December 22, 2005, amended² the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder⁴ whereby the proposal became effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FICC is implementing a surcharge to be imposed on participants of its Mortgage-Backed Securities Division (“MBSD”) that submit trade data by batch submission methods.

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

¹ 15 U.S.C. 78s(b)(1).

² The amendment clarified an ambiguity in the proposed rule text.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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 these statements.⁵

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

Since the inception of FICC's Real-Time Trade Matching ("RTTM") service in 2002, the interactive submission method has grown to encompass an increasing portion of trades being submitted to FICC's MBSD.⁶ The expansion of the use of the interactive trade submission method through RTTM for mortgage-backed securities is a FICC initiative because of the negative effects associated with the use of batch submission methods.⁷ These negative effects include:

- (a) increased risk to the batch submitting participant as it foregoes timely achievement of trade comparison and a legally binding confirmation;
- (b) increased risk to the contra side of the batch submitting participant and creation of an operational burden for the contra side in accounting for differing submission methods among its counterparties; and
- (c) preclusion of FICC from laying the foundation to further reduce all participant costs through retirement of its proprietary batch trade submission program.

⁵ The Commission has modified the text of the summaries prepared by FICC.

⁶ As of May 2005, 35 percent of MBSD participants use the interactive submission method. The activity of these participants encompassed 80 percent of total par and 74 percent of total sides of transactions processed.

⁷ See Securities Exchange Act Release No. 45563 (Mar. 14, 2002), 67 FR 13389 (Mar. 22, 2002) [File No. SR-MBSCC-2001-02].

In order to ensure that participants use the RTTM service and submit transaction data on a timely basis and to cover the cost of batch processing, FICC will impose the following fees on participants of MBSD:

- (a) single-batch submitters will be subject to a 50 percent surcharge (with a minimum of \$500) on their post discount trade recording fees as recorded on their monthly bill and
- (b) multi-batch submitters will be subject to a 20 percent surcharge (with a minimum of \$500) on their post discount trade recording fees as recorded on their monthly bill.

As an additional incentive for participants to switch to the interactive submission method, the minimum surcharge may be increased to \$1,000 at a later date, anticipated to occur at the beginning of 2007.⁸ FICC also plans to announce a date, anticipated to be December 31, 2007, after which it will no longer support batch submissions.⁹

Surcharge revenue will be paid through to individual interactive messaging submitters pro rata based upon their ratio of trade recording fees to system-wide trade recording fees. FICC reserves the right to waive the surcharge for a particular MBSD participant if it determines in its sole discretion that the participant's classification as a single or multi-batch user in a particular month is due to a non-recurring system or operational problem.

The fees will become effective April 1, 2006.

⁸ FICC will file a proposed rule change with the Commission and will notify its MBSD participants by Important Notice prior to implementing any such fee increase.

⁹ FICC will file a proposed rule change with the Commission and will notify its MBSD participants by Important Notice prior to implementing this policy.

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act¹⁰ and the rules and regulations thereunder applicable to FICC because it encourages FICC's participants to communicate with the clearing corporation in a manner that will promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have an 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 received by FICC.

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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and Rule 19b-4(f)(2)¹² thereunder because the rule establishes a due, fee, or other charge. At any time within sixty days of the filing of the amended proposed rule change,¹³ the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

¹⁰ 15 U.S.C. 78q-1.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

¹³ For purposes of calculating the sixty day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on the date on which the last amendment to the proposed rule change was filed with the Commission. 15 U.S.C. 78s(b)(3)(C).

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 Number SR-FICC-2005-20 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 20549-9303.

All submissions should refer to File Number SR-FICC-2005-20. 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 filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at www.ficc.com. 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-2005-20 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.¹⁴

Nancy M. Morris
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).