

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55364; File No. SR-FICC-2006-05)

February 27, 2007

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Wind-Down of a Participant

I. Introduction

On March 28, 2006, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) and on September 28, 2006 and October 13, 2006, amended proposed rule change SR-FICC-2006-15 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ Notice of the proposal was published in the Federal Register on December 20, 2006.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change as modified by Amendment Nos. 1 and 2.

II. Description

The rule change adds new Rule 21A, Wind-Down of a Netting Member, to the Rules of FICC’s Government Securities Division (“GSD”) and new Rule 2A, Wind-Down of a Participant, to the Rules of FICC’s Mortgage-Backed Securities Division (“MBSD”) to address a situation where a member or participant notifies FICC that it intends to wind down its activities, and FICC determines, in its discretion, that it must take special action in order to protect itself and its members and participants.³

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 54929, (December 13, 2006), 71 FR 76398.

³ Similar proposed rule changes have been filed by The Depository Trust Company [File No. SR-DTC-2006-07] and the National Securities Clearing Corporation [File No. SR-NSCC-2006-05].

The new rules allow FICC to determine that a participant is a wind-down member or wind-down participant and sets forth the conditions FICC using its discretion may place on a wind-down member or participant and the actions FICC using its discretion may take with respect to a wind-down member or participant to protect itself and its members or participants. Such actions may include restricting or modifying the wind-down member or participant's use of any or all of FICC's services and may include requiring the wind-down member or participant to post increased clearing fund deposits. FICC will retain all of its other rights set forth in its rules and membership and participant agreements, including the right to declare the wind-down member or participant insolvent, if applicable, and to cease to act for it.

The rules are designed to ensure that FICC has the needed flexibility to appropriately manage the risks presented by an entity in crisis that remains a participant of FICC. This is particularly important to preserve orderly settlement in the marketplace and to minimize the risk of loss to FICC and its members and participants. Each rule sets forth in a single rule FICC's rights and the actions it may take in such a situation. Currently, these rights and actions are either permitted elsewhere in FICC's rules or are permitted pursuant to FICC's emergency authority. By placing FICC's rights in a single rule for each division, however, the rule change should provide clarity and a clear legal basis for FICC's rights or actions taken with respect to a wind-down member or participant. FICC also believes that the rules are designed to minimize the need for rule waivers.

III. Discussion

Section 17A(b)(3)(F) of the Act provides that the rules of a clearing agency should be designed to safeguard securities and funds which are in the custody or control of the clearing

agency or for which it is responsible.⁴ The sudden or unanticipated financial or operational difficulties of a clearing member or participant or the termination of its trading activities may create uncertainty among industry participants about FICC's ability to meet its settlement obligations on time and concern about the risk to the assets of the clearing agency or of its members or participants. The proposed rule change clarifies that FICC has discretionary power in a wind-down situation to take certain actions to assure the ongoing operations of itself and to protect the securities and funds of FICC and of its members and participants. By making clear in a single rule of each of its divisions the authority FICC has under its rules to facilitate the orderly wind down of a member or participant's activities, the proposed rule change is designed to assure the safeguarding of securities or funds which are in FICC's control or for which it is responsible.⁵

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.⁶

⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 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).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-FICC-2006-05), as modified by Amendment Nos. 1 and 2, be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Florence E. Harmon
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).