

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49989; File No. SR-FICC-2004-12)

July 8, 2004

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee Structure of the Government Securities Division Regarding Late Notifications of Repo Collateral Substitutions and to Designate an Additional High Volume Repo Substitution Day Trigger

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on June 15, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which Items have been prepared primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) under the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder<sup>4</sup> whereby the proposal is effective upon filing with the Commission. 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 purpose of the proposed rule change is to amend the fee structure of FICC's Government Securities Division ("GSD") regarding late notifications of repo collateral substitutions and to designate an additional high volume repo substitution day trigger.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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.

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

1. Proposed Fee Structure Amendment

The GSD's Rules contain two deadlines for the submission of required repo collateral substitution notifications to FICC: (i) a deadline of noon, after which the dealer member that initiated the substitution is subject to a late fee of \$500 per substitution notification and (ii) an absolute deadline of 12:30 p.m., after which the rules require that the GSD reject the substitution notification. FICC extends the noon and 12:30 p.m. submission deadlines by one hour on those days that The Bond Market Association ("TBMA") announces in advance will be high volume days. FICC also can trigger the designation of a day as a high volume day.

The proposed rule filing: (i) lowers the \$500 late fee to \$100 for notifications received after the noon deadline, (ii) removes the absolute deadline of 12:30 p.m. after which time notifications are to be rejected, (iii) provides that notifications received after the 12:30 p.m. deadline will be processed by FICC on a good faith basis only, and (iv) imposes a fee of \$250 for notifications received and processed after the 12:30 p.m. deadline. These changes are being done in consideration of the manual process currently involved in submitting the required

notifications. Specifically, FICC provides a substitution notification screen that participants use to submit collateral substitution requests to FICC. However, the process required to complete the notification screen is labor intensive and subject to the typical inefficiencies and errors associated with manual processing. Furthermore, regarding repos done on a blind-brokered basis, which is how the vast majority of repos are executed, the repo dealer must contact the repo broker to arrange for the substitution since the repo dealer does not know its original counterparty. The repo broker then contacts the reverse repo dealer to notify it of the substitution. The interaction between repo brokers and counterparty dealers further lengthens the time required to effect a substitution notification. In certain instances, the assessments of fees against the initiating-dealer counterparty have resulted in painstaking efforts to “identify” the FICC member that caused the late notification. These efforts may at times strain the critical relationships between repo brokers and dealers.

FICC believes that until it provides a more comprehensive automated service for facilitating the timely and efficient processing of collateral substitution notifications to members, it is inappropriate to impose an absolute deadline after which it rejects a substitution notification. FICC proposes that any notification received after 12:30 p.m. be processed on a good faith basis only and subject to a late fee of \$250 if processed by FICC. Also for this reason, FICC believes that the fee associated with the late submission of such notifications should be lowered to \$100 for notifications received after 12:00 p.m. The 12:00 p.m. and 12:30 p.m. deadlines will continue to be extended by an hour on those days indicated by TBMA as high volume repo substitution days as well as those days which FICC designates as high volume days.

2. Designation of an Additional High Volume Repo Substitution Day Trigger

As stated above, FICC extends the noon and 12:30 p.m. submission deadlines by one hour on those days that TBMA announces in advance will be high volume days. The rules currently provide FICC with the authority to trigger a designation of a high volume day as well.<sup>5</sup> Up until this point, the event used by FICC to trigger a high volume day has been the receipt of more than 150 collateral substitution notifications in the aggregate by the GSD's repo broker members.

FICC, after consultation with TBMA and its members, now seeks to designate the receipt by any one repo broker of 40 or more collateral substitution notifications as another high volume day trigger. FICC has experienced days where the number of notifications did not exceed 150 across all of the repo brokers, but one or more repo brokers have each received 40 or more requests. Such a large number of requests was and continues to be extremely burdensome on repo brokers, and with such large numbers, they are not able to timely submit the information to FICC. Therefore, FICC believes the receipt of 40 or more notifications by any one repo broker should also be a trigger for a high volume day.

The proposed rule change is consistent with Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder because it is designed to promote the prompt and accurate clearance and settlement of securities transactions by setting forth more practical and less burdensome operating standards for the repo service.

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<sup>5</sup> This authority was given to the Government Securities Clearing Corporation ("GSCC"), FICC's predecessor. Securities Exchange Act Release No. 46855 (November 20, 2002), 67 FR 70987.

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

(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 received by FICC.

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

FICC has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup> Because the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

Rule 19b-4(f)(6)(iii) also requires a self-regulatory organization to provide the Commission with written notice of its intent to file a proposed rule change pursuant to Rule 19b-4(f)(6) along with a brief description and text of the proposed rule change at least five business days prior to filing the proposed rule change, or such shorter time as the Commission designates. FICC complied with this requirement.

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Commission is waiving the 30-day operative delay to allow FICC and its members to immediately benefit from the rule change. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>9</sup>

At any time within 60 days of the filing of such proposed rule change, 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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2004-12 on the subject line.

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<sup>9</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2004-12. 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 [www.ficc.com](http://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-2004-12 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.<sup>10</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).