

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50536; File No. SR-FICC-2004-07)

October 13, 2004

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change to Amend the Fixed Income Clearing Corporation's Rules to Eliminate the "Mortgage Banker" Category of Membership in its Mortgage-Backed Securities Division

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, notice is hereby given that on March 25, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on June 21, 2004 and October 14, 2004, amended the proposed rule change 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 parties.

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

FICC is seeking to amend the rules of its Mortgage-Backed Securities Division ("MBSD") to eliminate the "mortgage banker" category of membership.

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 these 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

In accordance with Article III, Rule 1, Section 2, "Financial Requirements for Participants and Limited Purpose Participants," of MBSB's Rules, mortgage bankers are subject to a minimum net worth requirement of \$5 million. With the exception of "brokers," all other applicants are subject to a minimum net worth or regulatory net capital requirement of \$10 million.³

Historically, mortgage bankers (which generally act as mortgage originators) maintained relatively little capital. FICC considered a lower minimum capital standard appropriate to enable and encourage these types of firms to participate in FICC. The mortgage banker category of membership is now becoming obsolete for two principal reasons. First, changes in the mortgage business are causing small originators to use Fannie Mae and Freddie Mac making MBSB membership less desirable and therefore making the relatively lower minimum capital standard less justified. Second, from a membership administration perspective there appears to be no precise, uniform definition for "mortgage banker."⁴

FICC is proposing to eliminate the mortgage banker category from the MBSB Rules. If approved by the Commission, entities that would have previously qualified as mortgage bankers

³ MBSB's Rules define "broker" as a member that is in the business of buying and selling securities as agent on behalf of dealers. Brokers are currently subject to a minimum net or liquid capital requirement of \$5 million.

⁴ Mortgage originators are state-regulated entities, and definitions of such entities vary with each state. Generally, these definitions target entities whose "primary" business is the issuance of mortgages. MBSB has historically classified entities as mortgage bankers based upon an applicant's representations made in its membership application and confirmed by management's review of the applicant's business.

would be classified under the catch-all category of membership in Article III, Rule 1, Section 1, “Applicants Eligible to Become Participants or Limited Purpose Participants.”⁵ This classification would increase the minimum net worth requirement from \$5 million to \$10 million for these members. FICC does not anticipate that this increase will adversely affect existing mortgage banker members because member financial statements filed with FICC indicate that each mortgage banker member’s capitalization currently exceeds the new minimum.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁶ and the rules and regulations thereunder applicable to FICC. By removing the mortgage banker category from the MBSD Rules and by providing that entities that currently are classified as such meet a higher minimum financial requirement, it enhances the ability of FICC to maintain a financially sound membership base without an adverse effect on itself or its members. As such, the proposed rule change should promote the safeguarding of securities and funds that are in the custody or control of FICC.

(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.

⁵ Article III, Rule 1, Section 1(f) provides a catch-all category for “firms in such other categories as [FICC] from time to time may determine.”

⁶ 15 U.S.C. 78q-1.

(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

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-2004-07 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-2004-07. 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://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-2004-07 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.⁷

Margaret H. McFarland
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).