

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51413; File No. SR-FICC-2004-17)

March 23, 2005

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change to Modify the Assessment Process for Late Submissions of Collateral Made Through the GCF Repo Service and to Increase the Types of Securities Available to Satisfy Collateral Allocation Obligations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on August 13, 2004, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) and on March 14, 2005, 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 the Government Securities Division (“GSD”) of FICC to modify the assessment process for late submissions of collateral allocations made through its GCF Repo service and to increase the types of securities that can be used by a member in satisfaction of collateral obligations.²

¹ 15 U.S.C. 78s(b)(1).

² The proposed rule change also amends GSD’s rules to clarify that where a collateral allocation obligation is satisfied by the posting of U.S. Treasury Bills, notes, or bonds, such securities must mature in a time frame no greater than that of the securities that have been traded except where such traded securities are U.S. Treasury Bills, such obligations must be satisfied with the posting of “comparable securities” and/or cash only.

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.³

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

1. Assessment process for late submissions of collateral allocations made through the GCF Repo service

On October 30, 1998, the Commission granted approval to FICC's predecessor, the Government Securities Clearing Corporation, to implement its GCF Repo service, which is a significant alternative financing vehicle to the delivery versus payment and tri-party repo markets. That approval included a fine schedule for failure to adhere to relevant timeframes.⁴ The fine schedule was not implemented because of certain events.⁵ More recently, FICC has shifted the service from an interbank service to an intrabank service in order to address certain

³ The Commission has modified the text of the summaries prepared by FICC.

⁴ Securities Exchange Act Release No. 40623 (October 30, 1998), 63 FR 59831 (November 5, 1998) [File No. SR-GSCC-98-02].

⁵ As a new and complex service, members had difficulty adhering to the timeframes. In addition, the initial rate of participation was very poor, and there was a consequent need to encourage growth in the service.

payment system risk issues that have arisen and that have resulted in decreased volumes.⁶ FICC believes, given the lower volumes and likely forthcoming changes to the service to address the payment system risk issues, that the original fine schedule should be replaced.

Specifically, FICC is proposing to implement a late fee schedule to replace the late fine schedule. FICC believes that late fee schedules are appropriate in situations where the member's lateness causes an operational burden but does not result in risk to FICC or its members.⁷ In addition, in order to encourage members to make their collateral allocations on a timely basis, there would be one late fee targeted to the most significant timeframe surrounding the service. Specifically, if a dealer does not make the required collateral allocation by the later of 4:30 p.m. (New York time) or 1 hour after the actual close of Fedwire GCF repo reversals, the dealer will be subject to a late fee of \$500.00. Finally, in order to alleviate the potential operational and administrative burdens caused by late collateral allocations, FICC is proposing to amend the GCF Repo rules to provide that FICC will process collateral allocation obligations that are received after 6:00 p.m. on a good faith basis only. This 6:00 p.m. deadline will replace the 7:00 p.m. final cutoff for dealer allocations of collateral to satisfy obligations.

⁶ Securities Exchange Act Release No. 48006 (June 10, 2003), 68 FR 35745 (June 16, 2003) [SR-FICC-2003-04].

⁷ In a GCF Repo transaction, a borrower does not receive the funds borrowed until it makes the required collateral allocation. The lender maintains control of the funds until the allocation is made. The transaction does not produce a risk of loss to FICC, the lender, or other members.

2. Types of Collateral Used to Satisfy Collateral Allocation Obligations

Currently, GSD Rule 20 provides that a collateral allocation obligation may be satisfied with “comparable securities,” Treasury securities, and/or cash. “Comparable securities” are defined to include any securities that are represented by the same generic CUSIP number as the securities in question. Therefore, in the event that a member does not have enough of the collateral securities or the Comparable Securities, the only collateral that can be used is Treasury securities and/or cash.

GSD members have approached FICC and asked that the rules be amended to add additional collateral options as set forth below:

- (a) Ginnie Mae adjustable-rate mortgage obligations could be satisfied with Ginnie Mae fixed-rate mortgage backed securities and
- (b) Fannie Mae and Freddie Mac adjustable-rate mortgage obligations could be satisfied with: (i) Fannie Mae and Freddie Mac fixed-rate mortgage-backed securities, (ii) Ginnie Mae fixed-rate mortgage-backed securities, and (iii) Ginnie Mae adjustable-rate mortgage obligations.⁸

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁹ and the rules and regulations thereunder applicable to FICC because it is designed to promote the prompt and accurate clearance and settlement of securities transactions by allowing FICC’s members additional collateral options with which to meet GCF collateral

⁸ The industry recognizes fixed-rate securities as an acceptable substitute for adjustable-rate securities as collateral for mortgage-backed repo trades.

⁹ 15 U.S.C. 78q-1.

allocation obligations and by implementing a fee schedule that should incentivize members to allocate collateral on a timely basis.

(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

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-2004-17 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-2004-17. 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/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-2004-17 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.¹⁰

Margaret H. McFarland
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).