

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51865; File No. SR-FICC-2005-11)

June 17, 2005

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Institute a Netting Process for Fail Deliver and Fail Receive Obligations for Netting Members in its Government Securities Division

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on May 19, 2005, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) 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

The purpose of this proposed rule change is to amend the rules of FICC’s Government Securities Division (“GSD”) to institute a process to net netting members’ fail deliver and fail receive obligations with their current settlement obligations on a daily basis.

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

The rules of the GSD provide that FICC may, in its sole discretion, net a netting member's fail deliver and fail receive obligations with the member's current settlement obligations. FICC is proposing to amend the GSD's rules to institute this fail netting process on a daily basis.

Since the implementation of the GSD's netting system (by FICC's predecessor, the Government Securities Clearing Corporation), outstanding fails have been processed separately from new trading activity. Demand by members for the netting of fails was initially low due to the fact that many members could not properly account for netted fails in their proprietary systems. In addition, demand for netting of fails remained low until the summer of 2003 when the market experienced significant fails in the Treasury 10-year note due May 2013.

In recent years, FICC has been integrally involved in assisting the industry in addressing significant fail situations. On several occasions, FICC intervened by supporting special netting of fails with members' current settlement activity. While this procedure helped alleviate the number of open fails and associated settlement issues and risks, it was only an intermediate step in resolving the need for the more regular fail processing proposed herein. Moreover, the industry's continued experience with fails has caused a heightened demand on the part of members for the GSD to institute such a process.

Pursuant to the proposed rule change, the GSD would implement a methodology whereby outstanding member fail obligations will be netted with current settlement activity. This process will provide reduced risk exposure to members because it will facilitate settlement by allowing

members to close open fails on their books on a daily basis, as well as reduce the number of outstanding clearance obligations at FICC.

FICC does not anticipate an undue burden on members as a result of this proposal. The GSD has issued an Important Notice³ to all members seeking feedback on the proposed change, and to date, the substance of any feedback received has been positive.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁴ and the rules and regulations thereunder applicable to FICC because it allows FICC to reduce the risks posed by large numbers of open fail positions. As such, the proposed rule facilitates the prompt and accurate clearance and settlement of securities transactions and assures the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible.

(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.

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

³ Important Notice GOV028.05 (March 10, 2005).

⁴ 15 U.S.C. 78q-1.

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-2005-11 in the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-FICC-2005-11. 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, 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-2005-11 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.⁵

Margaret H. McFarland
Deputy Secretary

⁵ 17 CFR 200.30-3(a)(12).