SR-FICC-2004-14

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October 25, 2004

Mr. Jonathan G. Katz
Secretary to the Commission
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: File No. SR-FICC-2004-14

Dear Mr. Katz:

III Global Ltd., III Finance Ltd., III Relative Value/Macro Hub Fund Ltd., (the "Companies"), Cayman Islands exempted companies that are Participants of the Mortgage-Backed Securities Division ("MBSD") of the Fixed Income Clearing Corporation ("FICC"), submit this letter to comment on the above-captioned proposed rulemaking by FICC (the "Proposed Rule Change"). The Companies have a combined capitalization of approximately $4 billion and, collectively, are one of MBSD's largest non-dealer Participants.

Among other proposals set forth in the Proposed Rule Change, FICC proposes to amend MBSD's participants fund deposit ("Participants Fund Deposit") requirements to impose a 30% collateral premium on foreign MBSD Participants ("Foreign Participants") but not on domestic MBSD Participants ("Domestic Participants"). This collateral premium must be met by posting a letter of credit. The Companies strongly object to this proposal. The proposed collateral premium introduces unnecessary costs, is unfairly discriminatory against Foreign Participants, represents an inequitable allocation of charges among Participants, and inhibits competition, all in violation of Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

The Proposed Collateral Premium Will Impose Unnecessary Costs. Section 17A(a)(1)(B) of the Exchange Act reveals that one of Congress' goals in establishing a national system for clearance and settlement of securities transactions was to avoid the imposition of

unnecessary costs on investors and persons facilitating transactions on behalf of investors. In the Proposed Rule Change, FICC makes an unsupported claim that the 30% collateral premium is necessary to balance a "certain amount" of "legal risk, country risk and regulatory risk" allegedly presented by Foreign Participants. FICC does not, however, identify what these risks are or make even a *prima facie* showing that such a collateral premium is a necessary or appropriate way to address such alleged risks. Moreover, FICC does not provide any basis to support its determination that a premium of 30%, as opposed to any higher or lower figure, is a necessary or appropriate amount.

The Proposed Collateral Premium Requirement Is Unfairly Discriminatory. Section 17A(b)(3)(F) of the Exchange Act prohibits clearing agency rules that "permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency." The Proposed Rule Change blatantly and unfairly discriminates between Foreign Participants and Domestic Participants through the proposed premium collateral requirement. The discrimination against Foreign Participants as a group is obvious, and its unfairness is equally obvious because there is no identification of any financial risk presented by these Participants and no showing that the amount of the premium bears any rational relationship to any such risk.

The Proposed Collateral Premium Requirement Is an Inequitable Allocation of Charges Among Foreign Participants. Section 17A(b)(3)(D) of the Exchange Act provides that charges imposed by a clearing agency must be equitably allocated among its Participants. A collateral requirement is effectively a charge—indeed the cost of posting collateral is often the greatest cost of participation in a clearing agency. It is inequitable for the MBSD to allocate to the Companies and other similarly situated Foreign Participants the same collateral premium imposed on other Foreign Participants organized under different jurisdictions and operating under different circumstances simply because they share the common characteristic of not being formed in the United States, and thus allegedly present MBSD with certain "legal risks, country risks and regulatory risks." In addition to FICC's failure to provide any definition or examples of such risks that it may be intending to address, these risks cannot be the same among Foreign Participants from countries having widely different laws and legal systems and that are subject to entirely different regulatory regimes. To the extent that the Companies pose any risks to MBSD as a result of their organization under Cayman Islands law, the nature and magnitude of such risks are undoubtedly different from those presented by other Foreign Participants. Requiring a Foreign Participant to bear costs attributable to the specific risks that another Foreign Participant presents to MBSD is inconsistent with the express provisions of Section 17A of the Exchange Act.

The Companies do not believe that they present a risk to MBSD necessitating a premium collateral requirement. The collateral currently posted with MBSD by each of the Companies is held by MBSD in the United States and is subject to MBSD's security interest perfected under the laws of New York or another U.S. jurisdiction. Moreover, the Companies prepare their financial statements in accordance with U.S. GAAP, and would thus not be subject to the additional premiums also proposed to address the risks MBSD believes are presented by financial statements prepared in non-U.S. GAAP. The Companies' obligations under MBSD's rules are governed by the jurisdiction selected by MBSD. Further, each of the Companies has

previously submitted, as required by the Participant application process, an opinion of Cayman Islands counsel addressing a variety of issues relating to each Company's organization in the Cayman Islands (the "Opinions"). The matters addressed include the enforceability of the New York governing law clause in MBSD's participants agreement, the enforceability of the Company's submission to the jurisdiction of United States federal and state courts, and any potential impact of Cayman Islands insolvency laws on MBSD's rights in the event of an insolvency of the Company. MBSD reviewed these opinions and considered them in setting the Companies' respective Participants Fund Deposit requirements. The Companies are not aware of any changes in Cayman Islands law or any other circumstances affecting the Companies that would justify an increase in the Companies' required Participants Fund Deposits. Moreover, in light of MBSD's review of the Opinions and their discussion of various Cayman Islands legal matters, it is unclear what justification could be offered for a collateral premium which is not based on any evaluation of the specific risks that each of the Companies presents to MBSD.

The Proposed Collateral Premium Requirement Will Unnecessarily Inhibit Competition and Restrict Access to MBSD's Services. Section 17A(b)(3)(I) of the Exchange Act provides that the rules of a clearing agency must not "impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title." Such burdens may increase costs to the investing public. The 30% collateral premium obviously burdens Foreign Participants in competing with Domestic Participants. MBSD has made no showing, as required by the statute, that this burden is either necessary or appropriate.

For all of the reasons set forth above, the Companies request that the Commission disapprove the proposed collateral premium requirement as being inconsistent with the cited provisions of Section 17A of the Exchange Act.

Sincerely,

Kevin M. Brandt, Director

III Global Ltd.
III Finance Ltd.
III Relative Value/Macro Hub Fund Ltd.

cc: Jerry Carpenter, *Assistant Director*, Division of Market Regulation
Jeffrey F. Ingber, *General Counsel and Secretary*, Fixed Income Clearing Corporation