

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-DTC-2003-07. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 DTC.

All submissions should refer to File No. SR-DTC-2003-07 and should be submitted by May 19, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47713; File No. SR-FICC-2003-02]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Cross-Guaranty Agreements to Which FICC Is a Party

April 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 8, 2003, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as 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 persons.

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

The proposed rule change relates to cross-guaranty agreements to which FICC is a party.

#### 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.<sup>2</sup>

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

FICC is proposing to amend the rules ("Rules") of its Government Securities Division and Mortgage Backed Securities Division ("Divisions") to make clear that, in the event that an entity that is a member of both Divisions becomes a defaulting member as defined in a cross-guaranty agreement to which FICC is a party and FICC chooses to participate in the arrangement, FICC

will first offset the liquidation results of the Divisions prior to presenting its available net resources to other participating clearing corporations.

FICC's Rules provide that FICC may enter into cross-guaranty agreements. Cross-guaranty agreements are an important risk protection measure for clearing agencies. Generally, these agreements contain a guaranty from one clearing agency to another clearing agency that can be invoked in the event of the default of a common member. The guaranty generally provides that the excess resources of a defaulting common member remaining after the defaulting common member's obligations to the guaranteeing clearing agency have been satisfied will be used to satisfy the obligations of the defaulting common member that remain unsatisfied at the other clearing agency. The Multilateral Agreement provides for the allocation of such excess resources among all clearing corporations in a deficit position with respect to a defaulting common member.

If a clearing corporation that is a party to the multilateral cross-guaranty agreement<sup>3</sup> suspends a person or declares a person insolvent pursuant to its rules and if such person is a common member of two or more clearing agencies, such clearing agency must give each other clearing agency a notice that it has ceased to act for the member and that it will participate in the arrangement. Each participating clearing agency has a certain amount of time pursuant to the multilateral cross-guaranty agreement to determine its "available net resources," which is the sum, positive or negative, derived after the application of any applicable liquidation procedures by adding the amounts owed by the participating clearing agency to the defaulting member and subtracting the amounts owed by the defaulting member to the participating clearing agency.

FICC desires to make clear in its rules that it will first offset the available net resources of each of its Divisions and

<sup>3</sup> FICC's predecessors, the Government Securities Clearing Corporation ("GSCC") and the MBS Clearing Corporation ("MBSCC"), filed rule filings in 2001 to enter into a multilateral cross-guaranty agreement with The Depository Trust Company, National Securities Clearing Corporation, Emerging Markets Clearing Corporation, and The Options Clearing Corporation ("Multilateral Cross-Guaranty Agreement") and to make incidental rule changes. Securities Exchange Act Release No. 45868 (May 2, 2002), 67 FR 31394 [File Nos. SR-DTC-2000-21, SR-OCC-2001-01, SR-NSCC-2001-13, SR-EMCC-2001-02, SR-GSCC-2001-12, and SR-MBSCC-2001-03]. Prior to that time, GSCC and MBSCC were parties to various bilateral cross-guaranty arrangements, which were terminated when the parties entered into the multilateral cross-guaranty agreement.

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

<sup>2</sup> The Commission has modified parts of these statements.

<sup>5</sup> 17 CFR 200.30-3(a)(12).

then present that net amount as its "available net resources" for participation with the other clearing agencies. FICC believes that it already has the authority in its rules to do so because the rules provide that it may enter into cross-guaranty agreements and thus follow their provisions.<sup>4</sup> However, FICC believes that it is prudent to make this explicit in its rules for the avoidance of any doubt. The proposed offset is consistent with the rationale for combining GSCC and MBSCC into FICC because it further optimizes the consolidation of risk management processes.

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it clarifies FICC's rules and further optimizes the synergies created by the combination of GSCC and MBSCC into FICC.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

FICC does not believe that the proposed rule change would have an impact on or impose a 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 nor 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**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act<sup>5</sup> and rule 19b-4(f)(1)<sup>6</sup> thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, enforcement, or administration of an existing rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

<sup>4</sup> The parties have amended the multilateral cross-guaranty agreement to reflect the merger of GSCC and MBSCC and the resulting FICC, as well as to reflect the offset between the Divisions of FICC, that is the subject of this rule filing. The offset between the Divisions of FICC is similar to the offset between DTC and its Mortgage-Backed Securities Division (which no longer exists) that was contained in the version of the multilateral cross-guaranty agreement and was included in the rule filings the Commission approved.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>6</sup> 17 CFR 240.19b-4(f)(1).

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-FICC-2003-02. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of FICC. All submissions should refer to the File No. SR-FICC-2003-02 and should be submitted by May 19, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>7</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47706; File No. SR-NASD-2003-33]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Trading of Certain Holding Company Depository Receipts**

April 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 7, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On April 17, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and to approve the amended proposed rule change on an accelerated basis.

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

Nasdaq proposes to adopt standards for the trading of certain Trust Issued Receipts known as Holding Company Depository Receipts ("HOLDRs") on an over-the-counter 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, Nasdaq included statements concerning the purpose of, and basis for, the

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

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

<sup>3</sup> See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 16, 2003 ("Amendment No. 1"). Amendment No. 1: (1) Makes clarifications and technical corrections to the proposed rule text and the purpose section of the filing; (2) discusses in the purpose section of the proposal Nasdaq's short sale exemption of certain HOLDRs, pursuant to NASD Rule 3350; (3) clarifies, by updating Exhibit 1, which HOLDRs specifically do not satisfy Nasdaq's generic listing and trading requirements pursuant to Rule 19b-4(e); and (4) provides additional detail on the component securities for each HOLDER, including share price, trading volume, and public float data in new Exhibit 3.