consequences among EMCC's participants.

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 5th Street NW, Washington, DC 20549–0069. 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–EMCC–2003–07. This file number should be included on the subject line if e-mail is used. To help the Commission 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 rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at EMCC's principal office and on EMCC's Web site at *http://www.e-m-c-c.com/legal/index.html*. All submissions should refer to File No. SR–EMCC–2003–07 and should be submitted January 27, 2004.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–2003–07) be, and hereby is, approved on an accelerated basis through June 30, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–219 Filed 1–5–04; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49003; File No. SR–FICC–2003–10]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Amend the Fixed Income Clearing Corporation's Cross-Margining Agreements With the Chicago Mercantile Exchange, BrokerTec Clearing Company, and the Board of Trade Clearing Corporation and To Eliminate the Cross-Margining Agreement with the New York Clearing Corporation

December 29, 2003.

I. Introduction

On October 6, 2003, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on December 11, 2003, amended[1] proposed rule change SR–FICC–2003–10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[2] Notice of the proposal was published in the **Federal Register** on November 21, 2003.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

FICC is seeking to amend its cross-margining agreements with the Chicago Mercantile Exchange (''CME''), BrokerTec Clearing Company (''BCC''), and the Board of Trade Clearing Corporation (''BOTCC'') and to eliminate its cross-margining agreement with the New York Clearing Corporation (''NYCC'').

1. New Cross-Margining Agreement With CME

Through its Government Securities Division (''GSD''), FICC has a cross-margining arrangement with CME.[4] FICC is proposing to terminate its existing cross-margining agreement with CME and to enter into a new cross-margining agreement with the CME (''New FICC–CME Agreement'') to reflect the fact that, as of January 2, 2004, the CME will begin clearing certain Treasury and Agency futures contracts and options on such futures contracts that are traded on the Chicago Board of Trade (''CBOT'') and that are currently cleared by BOTCC. Under the New FICC–CME Agreement, the FICC products that will be eligible for cross-margining will be Treasury securities that fall into the GSD's offset classes A through G and GCF Repo Treasury securities with equivalent remaining maturities and non-mortgage-backed Agency securities that fall into the GSD's offset classes e and f and GCF Repo non-mortgage-backed Agency securities with equivalent remaining maturities. The CME products that will be eligible for cross-margining will be of two types: (i) The products currently eligible under the existing arrangement between FICC and CME which are Eurodollar futures contracts with ranges in maturity from 3 months to 10 years and options on such future contracts cleared by CME and (ii) the CBOT products which are Two-Year Treasury Note Futures contracts and options thereon, Five-Year Treasury Note Futures contracts and options thereon, Ten-Year Treasury Note Futures contracts and options thereon, Thirty-Year Treasury Bond Futures contracts and options thereon, Five-Year Agency Note Futures contracts and options thereon, and Ten-Year Agency Note Futures contracts and options thereon to be cleared by CME.

No significant changes are being proposed to the existing FICC–CME cross-margining arrangement other than the addition of the CBOT products and certain FICC products as discussed in more detail below. The key aspects of the cross-margining arrangement, most notably, the calculation of the cross-margining reduction and the loss sharing provisions in the event of a participant default are not being amended.

2. Key Proposed Changes to the Existing Cross-Margining Agreement Between FICC and CME

The addition of the CBOT products has necessitated new definitions for ''CBOT Eligible Products,'' ''CME Eligible Products,'' and ''FICC Eligible Products,'' as well as Offset Class tables for these products in Appendix B of the agreement.

Appendix B of the FICC–CME Agreement is also being amended to include FICC's GCF Repo Treasury and non-mortgage-backed Agency products in the cross-margining arrangement.[5] By the effective date of the New FICC–CME Agreement, FICC will be margining its GCF Repo Treasury and non-mortgage-

[1] The amendment was technical in nature and did not require republication of the notice of filing.

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 48796 (November 17, 2003), 68 FR 65753.

[4] Securities Exchange Act Release No. 44301 (May 11, 2001), 66 FR 28207 (May 22, 2001) [File No. SR–GSCC–00–13].

[5] This amendment is also being proposed for the BCC cross-margining arrangement as discussed below.

backed Agency products based upon the specific underlying collateral, as opposed to the current system of margining these products based upon the longest maturity of eligible underlying collateral.[6] Therefore, these GCF Repo products can now be included in the cross-margining arrangement because they will no longer be margined at a generic rate but rather at a specific rate based on the actual underlying Treasury and Agency collateral.

As is the case with the current agreement between FICC and CME, the parties provide in the New FICC–CME Agreement that they will agree from time to time in a separate writing on the disallowance factors that will be used in the cross-margining arrangement. The disallowance factors that will be used upon implementation of the new arrangement are the ones set forth as examples in Appendix B to the New FICC–CME Agreement. The disallowance factors between FICC eligible products and CME eligible products (*i.e.*, Eurodollar products) have not changed. A new disallowance factor table has been added for cross-margining of FICC eligible Treasury and Agency products with CBOT Treasury and Agency eligible products.[7]

Appendix C of the current agreement, which sets forth the methodology for converting CME eligible products into Treasury cash equivalents for purposes of ultimately calculating the cross-margining reduction, has been made into Appendix C1, and a new Appendix C2, which contains the methodology for converting the CBOT eligible products into Treasury cash equivalents, has been added. This methodology is identical to the methodology contained in the BOTCC and BCC cross-margining agreements.

The existing agreement between FICC and CME provides for a ''Maximization Payment'' which is a cross-guaranty provision that sets forth the mechanism for a clearing organization with a remaining surplus after all guaranty payments in relation to cross-margining have been made (''Aggregate Net Surplus'') to distribute funds to one or more cross-margining partners with remaining losses. The New FICC–CME Agreement will make it clear that: (i) The Maximization Payment is also a guaranty payment (albeit outside of cross-margining, arising out of the ''Maximization Payment Guaranty'') and (ii) the defaulting member would have a reimbursement obligation with respect to such payment (''Maximization Reimbursement Obligation''). This means that should a clearing organization become obligated to pay the Maximization Payment, it may rely on the defaulting member's collateral to do so.[8]

A provision has been added to the New FICC–CME Agreement to take into account that a regulator or other entity having supervisory authority over FICC or CME may for safety and soundness purposes direct the clearing organization not to liquidate a defaulting member or to partially liquidate such member. In order to prevent the affected clearing organization from being penalized under the agreement for failing to liquidate or partially liquidating the member in this type of situation, the last two paragraphs of Section 7(d) of the New FICC–CME Agreement will provide that the affected clearing organization would be deemed to have a cross-margin gain equal to the base amount of the guaranty (*i.e.*, cross-margining reduction) or a pro rated amount of the base amount of the guaranty in a partial liquidation scenario.

A sentence has been added to Section 7(h) making clear that the clearing organizations have security interests in the ''Aggregate Net Surplus,'' a large component of which would be the collateral and proceeds of positions of a defaulting member, as security for any reimbursement obligation including any maximization reimbursement obligation that may arise on the part of a defaulting member.

Language has been added to the cross-margining participant agreements in Appendices D and E in order to further protect the clearing organizations by making clear that the clearing organizations have a security interest in the Aggregate Net Surplus and that a participant will have a reimbursement obligation in the event that a clearing organization becomes obligated to make a maximization payment. Participants in the current arrangement between FICC and CME and those in the arrangement between FICC and BOTCC to the extent they are not the same are being asked to reexecute the revised participant agreements in order to make them subject to the provisions of the New FICC–CME Agreement.[9]

3. Key Proposed Changes to FICC's Cross-Margining of CBOT Products

Because FICC is currently cross-margining its products with certain CBOT products pursuant to its agreement with BOTCC and because these CBOT products will be cross-margined pursuant to the proposed New FICC–CME Agreement, it is important to note the key differences between the cross-margining of the CBOT products under the existing arrangement with BOTCC and under the proposed new arrangement with the CME.

The minimum margin factor under FICC's cross-margining arrangement with BOTCC is 50 percent. FICC and CME have agreed to a minimum margin factor of 25 percent to apply to the cross-margining of CBOT products versus FICC products. This is the same minimum margin factor as is used in the current cross-margining arrangement with the CME with respect to the eligible Eurodollar products and is the same minimum margin factor used in the arrangement with BCC.

The New FICC–CME Agreement provides for inter-offset class cross-margining whereas the BOTCC arrangement is limited to intra-offset class cross-margining. The new agreement is consistent with the approach in the existing arrangements between FICC and both CME and BCC.

The current agreement between FICC and CME provides that in order to determine the gain or loss from the liquidation of the positions that were cross-margined resulting from a default

[6] Because of a previous inability to obtain timely data on the actual instruments posted in support of GCF Repo positions, the GSD has calculated affected members' clearing fund requirements based upon the assumption that collateral providers have assigned to each generic CUSIP the most volatile (*i.e.*, the longest maturity) collateral eligible. The GSD has been in the process of developing improvements to the current margining methodology. By the effective date of the proposed rule change, the GSD will be able to identify the specific CUSIP posted in calculating a member's clearing fund requirement related to its Treasury and Agency GCF Repo activity.

[7] FICC has computed and tested disallowance factors that will be applicable to each potential pair of positions being offset.

[8] The new guaranty provisions with respect to the Maximization Payment Guaranty will be identical to the ones in the current cross-margining agreement between FICC and BCC. In order to protect the clearing organizations in the event that a court determines that any amount of a Maximization Reimbursement Obligation may not be recovered by the clearing organization that made a Maximization Payment pursuant to a Maximization Payment Guaranty, a provision has been added (Section 8C(c)) to the New FICC–CME Agreement to provide that the payee clearing organization will be expected to return that amount. This protective provision is also in the BCC cross-margining agreement.

[9] Cross-margining is available to any FICC GSD netting member (with the exception of inter-dealer broker netting members) that is, or that has an affiliate that is, a member of a Participating CO. The FICC member (and its affiliate, if applicable) sign an agreement under which it (or they) agree to be bound by the cross-margining agreement between FICC and the Participating CO and which allows FICC or the Participating CO to apply the member's (or its affiliate's) margin collateral to satisfy any obligation of FICC to the Participating CO (or vice versa) that results from a default of the member (or its affiliate). Ownership of 50 percent or more of the common stock of an entity indicates control of the entity for purposes of the definition of ''affiliate.''

of a member, only the proceeds from the side of the market that was offset pursuant to the agreement at the last margin cycle are considered. In the New FICC–CME Agreement, this approach will be extended to the CBOT products in order to provide consistency in the liquidation methods.

4. Amendments 1, 2, and 3 to the FICC–BCC Cross-Margining Agreement

FICC is proposing to amend its cross-margining agreement with BCC with Amendment 3 to the agreement.[10] Amendment 3 will (i) add FICC's GCF Repo Treasury and non-mortgage-backed Agency products to the arrangement, (ii) add FICC's non-mortgage-backed Agency offset classes e and f, and (iii) amend the contingency procedures between the clearing organizations (contained in Appendix I of the agreement) to provide that FICC will not wait past 12 a.m. Eastern time for the BCC cross-margining file in order to run its cross-margining system. With respect to (ii), FICC has determined that even though BCC does not currently clear non-mortgage-backed Agency futures, the parties can still cross-margin FICC's Agency products against BCC's Treasury products given that the agreement provides for inter-offset class cross-margining using the appropriate correlation factors. With respect to (iii), the operational procedures provide that FICC will wait until 3:00 a.m. Eastern time for the BCC file which is the same cut-off time for all of its other cross-margining partners. However, FICC has determined that the 3:00 a.m. Eastern time cut-off, which is significantly later than the GSD's normal cross-margining processing time, should only be used for extreme situations where not including a particular file would be disruptive to members. Currently, this would not be anticipated to be the case for a BCC file because of BCC's files relatively low historical impact.[11] Therefore, FICC has determined that it would be more prudent from a risk management perspective to adopt a cut-off time of 12:00 a.m. Eastern time for receipt of BCC files.

As part of this proposed rule change filing, FICC will include Amendments 1 and 2 that were previously made with respect to its existing cross-margining agreement with BCC. The purpose of Amendment 1 was to update the list of products being cross-margined. The purposes of Amendment 2 were to remove references to the cross-margining agreement with NYCC from Appendix A in which the parties are required to list other outstanding cross-margining arrangements and to update the notice provision.

5. Amendments 1 and 2 to the FICC–BOTCC Cross-Margining Agreement

As in the case of the BCC agreement, FICC will include as part of this proposed rule change filing Amendments 1 and 2 that were previously made with respect to its existing cross-margining arrangement with BOTCC.[12] The purposes of Amendment 1 were to update the list of products being cross-margined, add an appendix setting forth operational contingency procedures, clarify procedures to be used if one clearing organization discovers a calculation error, correct cited Bankruptcy Code language, correct language in one of the participant agreements, and refine the timing of the effectiveness of changes to the cross-margining reduction. The purpose of Amendment 2 was to remove references to the cross-margining agreement with NYCC from Appendix A.

6. Removal of NYCC Cross-Margining Agreement From the GSD's Rules

FICC is removing its cross-margining agreement with NYCC[13] from the GSD's rules. That arrangement has been dormant for some time and the parties have agreed that should they determine to reinstitute cross-margining, they will enter into a new cross-margining agreement that will be similar to FICC's other cross-margining agreements. At that time, FICC would file the appropriate proposed rule change with the Commission.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible and in general will protect investors and the public interest.[14] The Commission finds that FICC's proposed rule change is consistent with this requirement because it continues FICC's cross-margining program which provides members with significant benefits, such as greater liquidity and more efficient use of collateral in a prudent manner, and enhances FICC's overall risk management process.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2003–10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–220 Filed 1–5–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49009; File No. SR–ISE–2003–39]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the International Securities Exchange, Inc., Relating to the Extension of a Linkage Fee Pilot Program

December 30, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2003, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in

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[10] Securities Exchange Act Release No. 45656 (March 27, 2002), 67 FR 15646 (April 2, 2002) [File No. SR–GSCC–2002–01].

[11] The operational and contingency procedures contained in the FICC–BCC agreement provide that in the event FICC does not receive BCC's file by the cut-off time, FICC will calculate the applicable cross-margining reductions assuming that BCC submitted a file with no positions available for cross-margining which may result in margin calls for the affected participants by both FICC and BCC. These margin calls would not be disruptive to members because the cross-margining reductions in the program with the BCC are not anticipated to be large amounts.

[12] FICC currently has a cross-margining agreement in place with BOTCC through which certain CBOT products are cross-margined with certain FICC products. Securities Exchange Act Release No. 45335 (January 25, 2002), 67 FR 4768 (January 31, 2001) [File No. SR–GSCC–2001–03]. BOTCC recently announced that it will become the clearing corporation for Eurex. In the next few weeks, FICC will determine the status of its cross-margining arrangement with BOTCC and will submit a proposed rule change filing addressing changes to the existing agreement, if necessary.

[13] Securities Exchange Act Release No. 41766 (August 19, 1999), 64 FR 46737 (August 26, 1999) [File No. SR–GSCC–98–04].

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.