

by rule or order from all provisions of the Act, except section 9(a)(2). It is estimated that the total number of respondents is 140. The Commission estimates that the total annual reporting burden under rule 24 is 1005 hours (e.g., 335 filings x 3 hours = 1005 burden hours).

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. There is no requirement to keep the information in the forms confidential because it is public information.

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 21, 2004.

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49125; File No. SR-FICC-2003-01]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Implementation of Fines

January 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 3, 2003, the Fixed Income Clearing Corporation ("FICC") filed

with the Securities and Exchange Commission ("Commission") and on January 8, 2003, and June 8, 2003, amended 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 implements fines for the failure to timely submit required financial reports and to meet certain additional reporting requirements. The proposed rule change also eliminates a provision in FICC's rules allowing foreign members to prepare their financial statements in accordance with accounting standards other than U.S. Generally Accepted Accounting Principles ("GAAP").

#### 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

Pursuant to section 5 of Rule 2 of the rules of the Government Securities Division of FICC and section 10 of Rule 2 of Article III of the rules of the Mortgage Backed Securities Division of FICC and in furtherance of FICC's obligation to minimize risk to all members, FICC requires that on a periodic basis members submit to FICC financial reports detailing certain information about their financial status.<sup>3</sup> These reports submitted by members are crucial to FICC surveillance procedures because they allow FICC credit risk personnel to review and monitor the financial condition of members. While the

majority of FICC members satisfy their reporting obligations in a timely manner, from time to time certain FICC members fail to submit their reports to FICC on time. The lack of timely submissions adversely affects FICC's financial surveillance processes and ultimately creates risk for FICC and its members. To remedy this situation, FICC is proposing the implementation of a fine schedule in order to promote improved compliance with reporting timeframes.

Historically, GSCC and MBSCC, FICC's predecessors, have instituted fines and late fees in order to enforce various deadlines, rules, and procedures. Since February 2002, GSCC has been charging members fees for failure to timely provide repo collateral substitution notifications. In July 2001, GSCC began imposing fees on those members who submit trade data on a non-interactive basis. In addition, since 1998 GSCC has had the authority to impose fines in order to promote greater compliance with its funds settlement debit and clearing fund deposit deficiency call deadlines. MBSCC likewise charges members additional fees for late payment of settlement balance order market differential payments and cash adjustment payments.

As with other fines that are currently in place, members will have the ability to contest the proposed fines through the process set forth in Rule 37 of the Government Securities Division's rules and Rule 7 of Article V of the Mortgage Backed Securities Division's rules.

FICC is also proposing to amend the rules of both the Government Securities Division and the Mortgage Backed Securities Division to require members to submit to FICC, concurrently with their submission to the applicable regulator, copies of such filings as determined by FICC from time to time, which members are required to file pursuant to the Sarbanes-Oxley Act of 2002 (and any amendments thereunder). In addition, FICC is proposing to amend the rules of the Government Securities Division to require members to submit to FICC, concurrently with their submission to the applicable regulator, all reports or other notifications required to be filed when their capital levels fall below required minimums.<sup>4</sup>

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

<sup>3</sup> These reports include monthly FOCUS and FOGS reports, quarterly CALL reports, annual audited financial statements, and other periodic financial data as outlined in FICC's rules.

<sup>4</sup> Both divisions require broker-dealer participants to submit copies of supplemental reports filed pursuant to Rule 17a-11 under the Act to FICC concurrently with their submission to the Commission. Rule 17a-11 requires registered broker-dealers to notify the Commission of a decline in net capital below minimum Commission requirements. However, participants (including

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

Section 5 of Rule 2 allows non-U.S. members to submit, among other things, to FICC audited financial statements and other financial information that has been prepared in accordance with U.S. GAAP, International Accounting Standards, or United Kingdom GAAP. In the filing, FICC is proposing to amend this section to require the financial information submitted to it to be prepared only in accordance with U.S. GAAP.

FICC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it allows FICC to monitor the financial condition of members more completely and on a timely basis, thereby limiting the risk to FICC and its members.

*(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**

Within 35 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 the proposed rule change or

broker-dealer participants) may have other similar regulatory notification requirements (imposed by the Commission or another regulator or similar authority) when their capital levels or other financial requirements fall below required levels. The rules of the Mortgage Backed Securities Division were recently amended to include the requirement that participants submit such notifications to FICC concurrently with their submission to the relevant regulatory authority. (See amendment 3 to SR-MBSCC-2001-06, Securities Exchange Act Release No. 45604 (March 20, 2002), 67 FR 14755, which is currently pending with the Commission). This present rule filing imposes the same requirement in the rules of the Government Securities Division.

(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](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-FICC-2003-01. 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, 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 and on FICC's Web site at <http://www.ficc.com>. All submissions should refer to the File No. SR-FICC-2003-01 and should be submitted by February 20, 2004.

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. 34-49127; File No. SR-MSRB-2003-07]

**Self-Regulatory Organizations; Municipal Securities Rulemaking Board.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to Proposed Amendment to the MSRB's Telemarketing Rules to Require Participation in the National Do-Not-Call Registry**

January 26, 2004.

**I. Introduction**

On August 19, 2003, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the MSRB's adoption of telemarketing rules to require brokers, dealers and municipal securities dealers (collectively "dealers") to participate in the national do-not-call registry. The proposed rule change was published for comment in the **Federal Register** on August 27, 2003.<sup>3</sup> On January 21, 2004, the MSRB submitted Amendment No. 1 to the proposed rule change.<sup>4</sup>

The Commission received three comment letters on the proposed rule change.<sup>5</sup> The text of proposed Amendment No. 1 is below. Additions from the original filing are in *italics*; deletions are in [brackets].

\* \* \* \* \*

**Rule G-39. Telemarketing**

(a)-(f) No change.

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

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

<sup>3</sup> The Commission published the proposed rule changes filed by the MSRB and the NASD simultaneously. See Securities Exchange Act Release Nos. 48389 (August 22, 2003), 68 FR 51609 (August 27, 2003) (SR-MSRB-2003-07); 48390 (August 22, 2003), 68 FR 51613 (August 27, 2003) (SR-NASD-2003-131).

<sup>4</sup> See letter from Ronald W. Smith, Senior Legal Associate, MSRB to Martha M. Haines, Office Chief, Division of Market Regulation, Commission, dated January 21, 2004 ("Amendment No. 1").

<sup>5</sup> See letters from Mary Talbutt-Glassberg, Fixed Income Trader, Davidson Capital Management, to MSRB, dated Aug. 20, 2003 ("Davidson Letter"); Ted F. Angus, V.P. and Senior Corporate Counsel for Retail Brokerage, Charles Schwab, to Mr. Jonathan G. Katz, Secretary, Commission, dated September 17, 2003, ("Schwab Letter"); and James Y. Chin, A.V.P., Director and Counsel, State Government Affairs & Staff Advisor to the State Telemarketing Subcommittee, Securities Industry Association, to Mr. Jonathan G. Katz, Secretary, Commission, dated September 17, 2003, ("SIA Letter").

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