

30 calendar days after it is placed on inactive status. A participant that requests that it be placed on inactive status will no longer be assessable pursuant to Rule 4 for losses due to other members.

While in inactive status, the participant must continue to provide the same financial reports that are required of active members and also must comply with all other reporting obligations. A participant that fails to do so will be subject to the same terms and conditions as active members (*e.g.* fines, disciplinary action, termination, *etc.*). An inactive member will also be responsible for a reduced monthly account maintenance fee of \$200.

If the participant determines to reactivate its membership status, an initial clearing fund deposit will be determined in the same manner as for a new applicant, and active membership status must be approved by the Membership and Risk Management Committee. Inactive members will not be required to reexecute membership agreements or provide other documentation to the extent EMCC determines that it already has the required documentation or information (*e.g.* financials) necessary to make a determination on the reactivation request. If the participant is inactive for longer than 18 months, EMCC will require an opinion of the participant's counsel in a form satisfactory to EMCC that affirms that there is no substantive change in the opinion(s) previously given as part of the member's original application for membership.

## II. Discussion

Section 17A(b)(3)(F) of the Act<sup>4</sup> requires that the rules of a clearing agency assure the safeguarding of securities and funds that are in the custody or control of the clearing agency for which it is responsible. The Commission finds that the proposed rule change is consistent with EMCC's obligations under section 17A(b)(3)(F) because creating a new inactive membership category should provide efficiencies and cost reductions to certain low-volume EMCC members without compromising EMCC's risk management safeguards.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act<sup>5</sup>

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-EMCC-2003-04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49142; File No. SR-FICC-2004-02]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove From FICC's Rules the Cross-Margining Agreement With BrokerTec Clearing Company and the Cross-Margining Agreement With The Clearing Corporation

January 28, 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 12, 2004, 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 the proposed rule change is to remove from FICC's Rules the cross-margining agreement with BrokerTec Clearing Company ("BCC")<sup>2</sup> and to remove from FICC's Rules the cross-margining agreement with The Clearing Corporation ("TCC").<sup>3</sup>

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 45656 (March 27, 2002), 67 FR 15646 (April 2, 2002) [File No. SR-GSCC-2002-01].

<sup>3</sup> Securities Exchange Act Release No. 45335 (January 25, 2002), 67 FR 4768 (January 31, 2001) [File No. SR-GSCC-2001-03]. FICC entered into the cross-margining agreement with the Board of Trade Clearing Corporation, predecessor to The Clearing Corporation.

#### 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.<sup>4</sup>

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

The purpose of the proposed rule change is to remove from FICC's Rules the cross-margining agreement with BCC and the cross-margining agreement with TCC. Termination of the cross-margining agreement with BCC was necessitated by the fact that BCC ceased clearing operations on November 26, 2003, as a result of the suspension of business by the exchange for which BCC was the clearing corporation, BrokerTec Futures Exchange. Termination of the cross-margining agreement with TCC was necessitated by the fact that on January 2, 2004, TCC ceased clearing the Chicago Board of Trade products that were the subject of the cross-margining arrangement.<sup>5</sup>

The proposed rule change is consistent with section 17A(a)(2)(A)(ii) of the Act<sup>6</sup> and the rules and regulations thereunder because it facilitates the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities.

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

FICC does not believe that the proposed rule change will have any impact on 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

No written comments relating to the proposed rule change have been

<sup>4</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>5</sup> TCC recently announced that it will become the clearing corporation for another exchange and has approached FICC regarding establishing a new cross-margining arrangement. Upon the parties' agreement on the details of the new arrangement, FICC will submit a proposed rule change to the Commission covering the proposed arrangement.

<sup>6</sup> 15 U.S.C. 78q-1(a)(2)(A)(ii).

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> 15 U.S.C. 78q-1.

solicited or 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 upon filing pursuant to section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(4)<sup>8</sup> thereunder because the proposed rule does not significantly affect the respective rights or obligations of the clearing agency or persons using the service and does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the 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](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-FICC-2004-02. 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 20549-0609. Copies of such filing also will be available for

inspection and copying at the principal office of FICC and on FICC's Web site at [www.ficc.com](http://www.ficc.com).

All submissions should refer to File No. SR-FICC-2004-02 and should be submitted by February 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49158; File No. SR-FICC-2003-03]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Amend the Criteria Used To Place Members on Surveillance Status

January 30, 2004.

#### I. Introduction

On March 20, 2003, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on June 3 and 18, 2003, amended the proposed rule change SR-FICC-2003-03 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on October 30, 2003.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

Under the current rules of both the Government Securities Division ("GSD") and the Mortgage-Backed Securities Division ("MBS") of FICC, management has the ability to place a member in a surveillance status class depending on whether the member satisfies one or more of the enumerated financial and operational criteria in the specific class. Once placed on surveillance status, FICC closely monitors the member's condition. The current criteria for placing members on surveillance status are broadly written and capture many FICC members that pose minimal financial or operational risk to FICC. This creates administrative burdens for FICC staff, who must more closely monitor these members that

pose minimal risk, that is not necessary to protect FICC.

To remedy this problem, FICC has developed new criteria for placing members on surveillance. Specifically, all domestic broker-dealers and banks<sup>3</sup> that are GSD netting members and/or MBS clearing members will be assigned a rating that is generated by entering financial data of the member into a matrix ("Matrix") developed by credit risk staff.<sup>4</sup> Those members with a "weak" rating (deemed to pose a relatively higher degree of risk to FICC) will be placed on an internal "watch list" and will be monitored more closely by credit risk staff.<sup>5</sup> The consequences of being put on the "watch list" will be the same as is currently the case with surveillance status in the GSD's rules and will include possibly requiring the member on "watch list" status to submit additional financial reports and data and/or make additional clearing or participants fund deposits.<sup>6</sup>

All other categories of netting and clearing members, including non-U.S. netting members and comparison-only members, will not be included in the Matrix process because these members possess characteristics that prevent use of the Matrix to effectively evaluate their risk to FICC. However, these members will be monitored by credit risk staff using financial criteria deemed relevant by FICC.<sup>7</sup> Based on this

<sup>3</sup> The following categories of GSD members will receive ratings: Category 1 and 2 Dealer Netting Members, Category 1 and 2 Inter-Dealer Broker Netting Members, and Bank Netting Members. At MBS, Comparison and Clearing System Participants that are either banks or broker-dealers will be rated. Domestic broker-dealers and domestic banks are the only member types to which the Matrix will be applicable because (i) they represent the majority of the members of FICC and (ii) their financial reports contain information that lends them to the Matrix approach.

<sup>4</sup> FICC's approach to the analysis of members is based on a thorough quantitative analysis. A broker-dealer member's rating on the Matrix will be based on factors including size (*i.e.*, total excess net capital), capital, leverage, liquidity, and profitability. Banks will be reviewed based on size, capital, asset quality, earnings, and liquidity.

<sup>5</sup> Members will also be evaluated based on their compliance with certain "parameter breaks" which will be determined based on applicable monthly and/or quarterly exception reports generated by credit risk staff. A member may be placed on the "watch list" for parameter breaks in areas such as excess net capital, excess liquid capital, aggregate indebtedness, leverage ratio, or other financial requirements.

<sup>6</sup> The MBS's rules do not currently provide for surveillance status, but the MBS has the right under certain circumstances to require additional financial reports and increased participants fund contribution.

<sup>7</sup> Credit risk staff will monitor these members by reviewing similar criteria as the criteria used for members included in the Matrix. FICC will file a proposed rule change should it decide to use a more applicable Matrix process to evaluate these members.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(4).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 48689 (October 24, 2003), 68 FR 61844.