

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49947; File No. SR-FICC-2003-01]

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

June 30, 2004.

#### I. Introduction

On January 3, 2003, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2003-01 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On January 8, 2003, June 8, 2003, and February 25, 2004, FICC filed amendments to the proposed rule change. Notice of the proposal was published in the **Federal Register** on January 30, 2004.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The proposed rule change enables FICC to implement fines for the failure to timely submit required financial reports and to meet certain additional reporting requirements.<sup>3</sup> Pursuant to Rule 2, section 5 of FICC's Government Securities Division ("GSD") Rules and Article III, Rule 2, section 10 of FICC's Mortgage Backed Securities Division ("MBS") Rules and in furtherance of FICC's obligation to minimize risk to all members, FICC requires that on a periodic basis its members submit financial reports detailing certain information about their financial status.<sup>4</sup> These reports 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's members satisfy their reporting obligations in a timely manner, from time to time certain members are late in submitting their reports to FICC. Late submissions adversely affect FICC's financial surveillance processes and ultimately create risk for FICC and its members. To remedy this situation, FICC is implementing of a fine schedule to promote improved compliance with reporting timeframes.

Historically, GSCC and MBSCC, FICC's predecessors, have instituted fines and late fees to enforce various deadlines, rules, and procedures. Since February 2002, GSCC has been charging its members fees for failure to provide repo collateral substitution notifications in a timely manner. In July 2001, GSCC began imposing fees on those members that 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 submissions of settlement balance order market differential payments and cash adjustment payments.

As with other fines that are currently in place, members will be able to contest these new fines through the process set forth in Rule 37 of GSD's Rules and in Article V, Rule 7 of MBS's Rules.

FICC is also amending both GSD's and MBS's Rules to require members to submit to FICC concurrently with their submission to the applicable regulators copies of certain filings which members are required to file pursuant to the Sarbanes-Oxley Act of 2002 and any amendments thereunder. FICC will determine from time to time which of such filings it will require its members to submit. In addition, FICC is amending GSD's Rules to require members to submit to FICC concurrently with their submission to the applicable regulators all reports or other notifications required to be filed when their capital levels fall below required minimums.<sup>5</sup>

<sup>5</sup> Both GSD and MBSD 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, members (including broker-dealer members) may have other similar regulatory notification requirements (imposed by the Commission, another regulator, or similar

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.<sup>6</sup> By requiring its members to submit additional financial reports triggered by falling capital levels and by implementing fines for failure to submit financial reports on a timely basis, the proposed rule change is designed to improve FICC's ability to monitor the financial condition of its members. Accordingly, the proposed rule should help FICC limit financial risk to itself and its members and therefore should help FICC to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

#### 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 with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-FICC-2003-01) be and hereby is approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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authority) when their capital levels or other financial requirements fall below required levels. The Rules of MBSD were recently amended to include the requirement that members submit such notifications to FICC concurrently with their submission to the relevant regulatory authority. Securities Exchange Act Release No. 49156 (January 30, 2004), 69 FR 5881 (February 6, 2004) [File No. SR-MBSCC-2001-06]. This present rule filing imposes the same requirement in the Rules of GSD.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</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. 49125 (January 26, 2004), 69 FR 4547. Although the proposed rule change was amended after it was noticed for comment in the **Federal Register**, republication of the notice is not necessary because the post-notice amendment made only a technical change to the proposed rule change.

<sup>3</sup> The Commission incorrectly stated in the notice that the proposed rule change would also eliminate 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"). The proposed rule change does not deal with accounting standards.

<sup>4</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.