

by reducing debt and of refocusing its attention on the generation assets it owns and operates within the PJM Interconnection ("PJM") territory. Allegheny will use the net proceeds from the OVEC sale to reduce outstanding debt and for general corporate purposes.

Allegheny states that the Purchase Price and other definitive terms for the sale of OVEC reflected in the Purchase Agreement—negotiated by representatives of the parties over a number of months—are the result of arm's-length bargaining, and the Purchase Price constitutes fair and adequate consideration for the sale and assignment of Allegheny's interests in OVEC.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50457; File No. SR-FICC-2004-11]

**Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change To Amend the Rules of the Government Securities Division To Modify the Penalty Assessment Process for Violations of Minimum Financial Standards and for Failures of Members To Submit Requisite Financial Reports on a Timely Basis**

September 27, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")<sup>1</sup>, notice is hereby given that on May 17, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on July 8, 2004, amended 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**

FICC is seeking to amend the rules of its Government Securities Division ("GSD") to modify the penalty assessment process for violations of minimum financial standards and for failures to submit requisite financial reports on a timely 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, 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>2</sup>

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

The proposed rule change would amend the rules of the GSD by modifying the penalty assessment

process for violations of minimum financial standards and failure to submit requisite financial reports on a timely basis.

**(1) Violations of Minimum Financial Standards**

The rules of the GSD require netting members and clearing members to meet and maintain certain minimum financial standards at all times. While the majority of GSD members consistently satisfy their minimum financial requirements, occasionally members do breach these requirements and create undue risk for FICC and its GSD members. FICC has decided that a more uniform system of enforcing minimum financial requirements within the GSD would enhance the ability of FICC to minimize risk to itself and its members in a fair and effective manner.

Currently, the GSD Rules provide clearing fund consequences for the various categories of netting members that fall out of compliance with minimum financial requirements as follows:

Netting membership category	Current clearing fund consequence for falling below minimum financial standard <sup>3</sup>
Bank Member .....	Treated as a Category 2 Dealer <sup>4</sup>
Category 1 Dealer Member .....	Treated as a Category 2 Dealer
Category 2 Dealer Netting Member .....	Impose Required Fund Deposit equal to 150 percent of the normal calculation of Required Fund Deposit.
Category 1 Futures Commission Merchant Member .....	Treated as a Category 2 Futures Commission Merchant.
Category 2 Futures Commission Merchant Member .....	Impose Required Fund Deposit equal to 150 percent of the normal calculation of Required Fund Deposit.
Category 1 Inter-Dealer Broker Member .....	Treated as a Category 1 Dealer as far as Required Fund Deposit exceeds \$5 million.
Category 2 Inter-Dealer Broker Member .....	Treated as a Category 1 Inter-Dealer Broker, if it qualifies as such, or if it does not so qualify, impose Required Fund Deposit equal to 150 percent of the normal calculation of the Required Fund Deposit.

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by FICC.

Netting membership category	Current clearing fund consequence for falling below minimum financial standard <sup>3</sup>
Government Securities Issuer Member .....	Treated as a Category 2 Dealer.

<sup>3</sup> Each consequence remains effective for a period beginning on the date on which the member fell below such level and continuing until the 90th calendar day after the date on which such member returned to compliance with the applicable standard. If the consequence consists of a reclassification and the member does not return to compliance with its original minimum financial requirement within 90 calendar days of falling out of compliance, then the reclassification becomes permanent.

<sup>4</sup> Treating a bank or other non-Inter-Dealer Broker Category 1 Member as a Category 2 non-Inter-Dealer Broker Member for clearing fund purposes results in a higher clearing fund requirement for such a member because higher margin rates are imposed on on-Inter-Dealer Broker Category 2 Dealer Members than are imposed on banks and non-Inter-Dealer Broker Category 1 Members.

Under the proposed rule change, a violation of a minimum financial requirement by a member<sup>5</sup> of the GSD would result in the imposition on such member of a margin premium equal to the greater of (a) 25 percent of the member's unadjusted<sup>6</sup> clearing fund requirement or (b) \$1,000,000, to continue for ninety calendar days after the later to occur of (i) the member's return to compliance with applicable minimum financial standards or (ii) FICC's discovery of the applicable violation. This increase would not apply to Category 1 Dealer Netting Members, Category 1 Futures Commission Merchant Netting Members or Category 2 Inter-Dealer Broker Netting Members, where such members would continue to be reclassified as a different category netting member.<sup>7</sup> In addition, such violation would result in (1) a report of the violation to the FICC Membership and Risk Management Committee at its next regularly scheduled meeting or sooner if deemed appropriate by FICC and (2) the placement of such member on FICC's "watch list" subjecting it to more frequent and thorough monitoring. None of these consequences would preclude FICC from imposing any other margin consequences permitted by GSD's Rules.

#### (2) Failure To Submit Requisite Financial Reports on a Timely Basis

Certain members that are required to provide monthly or quarterly financial data to FICC at times have violated GSD's membership requirements by not timely providing such financial data. In such instances, management contacts each offending member and follows up with a letter.

<sup>5</sup> The proposed rule change only applies to GSD members that have minimum financial requirements (*i.e.*, GSD netting members).

<sup>6</sup> "Unadjusted" means the standard calculation before any additional assessments.

<sup>7</sup> If GSD Category 1 Dealer Netting Members, GSD Category 1 Futures Commission Merchant Netting Members and GSD Category 2 Inter-Dealer Broker Netting Members do not meet the membership qualifications applicable to the new category of netting member, then they will be subject to the increased margin premium specified in clause (1) above.

Failure to timely receive required information creates risk to FICC and as a result hinders FICC's ability to appropriately assess the financial condition of such members. To encourage timely submission of required financial data, FICC has established a mechanism to fine delinquent members.<sup>8</sup> FICC is now proposing two additional measures to enforce timely filing of financial information.

First, FICC proposes to subject delinquent members to a more stringent clearing fund requirement. Specifically, under the proposed rule filing FICC would automatically impose a margin premium equal to the greater of (1) 25 percent of the member's unadjusted clearing fund requirement or (2) \$1,000,000. The margin premium would be applied until appropriate financial data is submitted to FICC and is reviewed for compliance purposes. In addition, delinquent members would be precluded from taking back any excess clearing fund collateral to which they might ordinarily be entitled.

Second, members that fail to submit requisite financial reports on a timely basis would also automatically be placed on FICC's "watch list" and subject to more frequent and thorough monitoring.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>9</sup> and the rules and regulations thereunder applicable to FICC because it assures the safeguarding of securities and funds which are in the custody or control of FICC by encouraging members to maintain their minimum financial standards and to submit their required financial reports on a timely basis. As a result, FICC's ability to maintain a financially sound membership base should be enhanced.

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

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

<sup>8</sup> Securities Exchange Act Release No. 49947 (June 30, 2004), 69 FR 41316 [File No. SR-FICC-2003-01].

<sup>9</sup> 15 U.S.C. 78q-1.

impact 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

Written comments relating to the proposed rule change have not yet been 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

Within thirty-five 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 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. Comments may be submitted by any of the following methods:

##### *Electronic comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2004-11 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-FICC-2004-11. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 FICC and on FICC's Web site at <http://www.ficc.com/gov/gov.docs.jsp?NS-query>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2004-11 and should be submitted on or before October 22, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50456; File No. SR-NASD-2004-098]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Proposed Amendments to Eliminate Exemptions From the Continuing Education Regulatory Element Requirements

September 27, 2004.

On June 25, 2004, the National Association of Securities Dealers ("NASD") filed with the Securities and Exchange Commission ("Commission")

or "SEC") a proposed rule change, 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> to eliminate all currently effective exemptions from the requirement to complete the Regulatory Element of the Continuing Education ("CE") Program. On July 23, 2004, NASD submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on August 23, 2004.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

NASD Rule 1120(a) currently provides, in part, that no member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the Regulatory Element of the CE requirement set forth in this Rule.<sup>5</sup> The Regulatory Element component of NASD Rule 1120(a)(1) requires each registered person to complete a standardized, computer-based, interactive CE program within 120 days of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by NASD. Registered persons who fail to complete the Regulatory Element are deemed inactive and may not perform in any capacity or be compensated in any way requiring registration.

Currently, two classes of persons are exempt from Regulatory Element requirements under NASD Rule 1120(a). The first class of persons come within the "grandfathered" exemption which applies to persons who were continuously registered, without serious disciplinary action,<sup>6</sup> for more than ten years as of the Rule's effective date (*i.e.*, July 1, 1995). The second class of persons come within the "graduated" exemption, which, although discontinued as of July 1998, continues to apply to registered persons who were

"graduated" prior to the discontinuation of the exemption.<sup>7</sup>

However, in response to recommendations made by the Securities Industry/Regulatory Council on Continuing Education (the "Council"), NASD submitted a proposed rule change to eliminate all currently effective exemptions from required participation in Regulatory Element programs.<sup>8</sup> The Council believes that there is great value in exposing all registered industry participants to the full benefit of Regulatory Element programs.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. Proposed amendments are expected to become effective (1) not more than 30 days following publication of the Notice to Members announcing Commission approval, (2) not more than 30 days following the implementation of necessary changes to Web Central Registration Depository ("Web CRD"), or (3) April 4, 2005, whichever date is latest to occur.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 15A of the Act,<sup>9</sup> and the rules and regulations thereunder applicable to a national securities association.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act,<sup>11</sup> which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission

<sup>7</sup> When NASD Rule 1120 was first adopted in 1995, the Regulatory Element schedule required registered persons to satisfy the Regulatory Element on the second, fifth, and tenth anniversary of their initial securities registration. After satisfying the tenth anniversary requirement, a person was "graduated" from the Regulatory Element. A graduated principal re-entered the Regulatory Element if he or she incurred a significant disciplinary action. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

<sup>8</sup> The Council recommended at its December 2003 meeting that SRO Rules (*e.g.*, NASD Rule 1120(a)), be amended to eliminate existing exemptions from the Regulatory Element and to require all "grandfathered" and "graduated" persons to fully participate in future standardized CE programs, according to the Rule's prescribed schedule.

<sup>9</sup> 15 U.S.C. 78o-3.

<sup>10</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

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

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

<sup>3</sup> See letter from Grace Yeh, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 22, 2004 ("Amendment No. 1"). In Amendment No. 1, NASD replaced in its entirety the original rule filing.

<sup>4</sup> See Securities Exchange Act Release No. 50204 (August 16, 2004), 69 FR 51873 (August 23, 2004).

<sup>5</sup> See NASD Rule 1120(a)(1).

<sup>6</sup> For purposes of NASD Rule 1120, a significant disciplinary action generally means a statutory disqualification as defined in section 3(a)(39) of the Act; a suspension or imposition of a fine of \$5,000 or more; or being subject to an order from a securities regulator to re-enter the Regulatory Element. See Rule 1120(a)(3).

<sup>10</sup> 17 CFR 200.30-3(a)(12).