

8.85(b)(iii), to revert back to the original language so that the rule applies to both public customer and non-public customer orders.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5)⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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 90 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 Exchange 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. Please include File

Number SR-CBOE-2004-85 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-CBOE-2004-85. 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 the CBOE. 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-CBOE-2004-85 and should be submitted on or before January 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50888; File No. SR-FICC-2004-19]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Changes to Eliminate or Amend Rules that are Inconsistent With Current Practice, Have Expired, Are Outdated, Are Unnecessary, or Require Technical Correction

December 20, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 7, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") 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 would eliminate or amend FICC's Government Securities Division ("GSD") and Mortgage-Backed Securities Division ("MBSD") rules that are inconsistent with current practice, have expired, are outdated, are unnecessary, or require technical correction.

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.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by FICC.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).

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

1. Delete Provisions In GSD's Rules Regarding The Automated Customer Account Transfer Service ("ACATS")

The ACATS provisions were added to GSC's rules in 1998, when the National Securities Clearing Corporation requested that the Government Securities Clearing Corporation ("GSCC"), the GSD's predecessor, establish with it an interface that would enable account transfers involving netting-eligible government securities to be processed using GSCC's existing netting and settlement processes. This service was not implemented and as such its continued reference in the rules is inconsistent with current practice.

2. Delete Provisions From GSD's Rules That Designate Participation In The Repo Comparison And Netting Processes

GSD's rules currently refer to FICC as designating a member to be eligible to participate in the repo comparison and repo netting processes. When these repo services commenced in 1995, GSCC required testing prior to participation and subsequently designated members as eligible to participate in the services. Participation in these services has now become commonplace and special testing and designation for participation in the repo services is no longer necessary. As such, the provisions in question are outdated.

3. Make Technical Corrections To GSD Rules

FICC proposes to make the following technical corrections to GSD's rules:

- i. Change the definitions of "Interest Adjustment Payment" and "Interest Rate Mark Adjustment Payment" in GSD Rule 1 (Definitions) to correct an erroneous reference in both definitions to the "Federal Funds Rate" and replacing them with references to a newly defined term, "Overnight Investment Rate;"
- ii. change the term in Rule 1 "Multilateral Clearing Organization" to "Multilateral Clearing Agency;"
- iii. change the language of the definition in Rule 1 of "Member" to reflect the fact that certain members (*i.e.*, comparison-only members) are approved for membership by senior management and not by the Membership and Risk Management Committee;
- iv. correct Section 1(d) of Rule 2, where GSD is erroneously referred to as its predecessors name, GSCC;

v. delete subsection (b) of Rule 11B, which has expired;

vi. change an incorrect reference to "Rule 7" to "Rule 6C" in Rule 17, Section 4; and

vii. change a reference to the "Membership and Standards Committee" to the "Membership and Risk Management Committee" in Rule 48, Section 2.

4. Technical Corrections In The MBSD Rules

FICC proposes to renumber MBSD Rule 15 (Notices) of Article X to Rule 16 as it is in fact the 16th rule in that article.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act³ and the rules and regulations thereunder because it will eliminate unnecessary and/or outdated provisions and makes necessary technical changes.

B. Self-Regulatory Organization's Statement on Burden on Competition

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

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. Please include File Number SR-FICC-2004-19 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-2004-19. 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://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-2004-19 and should be submitted on or before January 19, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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³ 15 U.S.C. 78q-1.

⁴ 17 CFR 200.30-3(a)(12).