

## 2. Statutory Basis

The Exchange believes that the proposal, as amended, is consistent with the requirements of section 6(b) of the Act,<sup>8</sup> in general, and section 6(b)(5) of the Act,<sup>9</sup> 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 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 result in 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

The Exchange neither solicited nor received written comments with respect to the proposed rule change, as amended.

## 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, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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-BSE-2005-01 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-BSE-2005-01. 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, 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. 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-BSE-2005-01 and should be submitted on or before April 19, 2005.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51412; File No. SR-FICC-2004-13]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Amend the Rules of the Mortgage-Backed Securities Division To Impose Fines on Members for Violations of Minimum Financial Standards and To Modify the Penalty Assessment Process for Failures of Members To Submit Requisite Financial Reports on a Timely Basis

March 23, 2005.

#### I. Introduction

On June 24, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on February 2, 2005, amended proposed rule change SR-FICC-2004-13 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 February 16, 2005.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

FICC is seeking to amend the rules of its Mortgage-Backed Securities Division ("MBSD") to impose fines on members for violations of minimum financial standards and to modify the penalty assessment process for failures of members to submit requisite financial reports on a timely basis.

##### 1. Violations of Minimum Financial Standards

The rules of the MBSD require clearing members to meet and maintain certain minimum financial standards at all times. While the majority of MBSD members consistently satisfy their minimum financial requirements, occasionally members breach these requirements and create undue risk for FICC and its members.

Currently, the MBSD rules do not impose specific margin consequences for falling out of compliance with minimum financial requirements but allow the Membership and Risk Management Committee in its discretion to impose conditions which can include an increase in the participant's minimum required deposits to the Participants Fund.

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

<sup>2</sup> Securities Exchange Act Release No. 51146 (February 7, 2005), 70 FR 7984.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

Under the proposed rule change, a violation of a minimum financial requirement by an MBSD clearing participant will 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>3</sup> Participants Fund requirement or (b) \$1,000,000 which will begin on the day the participant fell below its minimum financial requirement and will continue for ninety calendar days after the later of (i) the member's return to compliance with its applicable minimum financial standards or (ii) FICC's discovery of the violation.<sup>4</sup> In addition, such violation will 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 staff and (2) the placement of such member on FICC's watch list subjecting it to frequent and thorough monitoring. None of these consequences will preclude FICC from imposing any other margin consequences permitted by the MBSD 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 MBSD's membership requirements by not providing such financial data in a timely manner. In such instances, management contacts the offending member and follows up with a letter.

Failure to receive required information in a timely manner hinders FICC's ability to appropriately assess the financial condition of such members and as a result creates risk to FICC. To encourage timely submission of required financial data, FICC has established a mechanism to fine delinquent participants.<sup>5</sup> FICC is now proposing two additional measures to enforce timely filing of financial information.

First, FICC will subject delinquent participants to a more stringent Participants Fund requirement. Specifically, FICC will now automatically impose a margin premium equal to the greater of (1) 25 percent of the member's unadjusted Participants Fund requirement or (2) \$1,000,000. The

margin premium will be applied until appropriate financial data is submitted to FICC and reviewed for compliance purposes. In addition, delinquent members will be precluded from taking back any excess Participants Fund collateral to which they might ordinarily be entitled.

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

#### **III. Discussion**

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible.<sup>6</sup> The Commission finds that FICC's proposed rule change is consistent with this requirement because it assures the safeguarding of such securities and funds by incentivizing participants to maintain their minimum financial standards and to submit their required financial reports on a timely basis. As a result, FICC's ability to monitor its participants and to maintain a financially sound participant base should be enhanced.

#### **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 section 17A of the Act 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-FICC-2004-13) be and hereby is approved.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51413; File No. SR-FICC-2004-17]

### **Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change To Modify the Assessment Process for Late Submissions of Collateral Made Through the GCF Repo Service and To Increase the Types of Securities Available To Satisfy Collateral Allocation Obligations**

March 23, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 13, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on March 14, 2005, 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 the Government Securities Division ("GSD") of FICC to modify the assessment process for late submissions of collateral allocations made through its GCF Repo service and to increase the types of securities that can be used by a member in satisfaction of collateral obligations.<sup>2</sup>

#### **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),

<sup>3</sup> "Unadjusted" means the standard calculation before any additional assessments.

<sup>4</sup> The required clearing fund deposit premium that will be assessed for violation of applicable minimum financial standards will be effective beginning on the day of the violation but will begin to be assessed on the date FICC becomes aware of the violation.

<sup>5</sup> Securities Exchange Act Release No. 49947 [June 30, 2004], 69 FR 41316 (File No. SR-FICC-2003-01).

<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> The proposed rule change also amends GSD's rules to clarify that where a collateral allocation obligation is satisfied by the posting of U.S. Treasury Bills, notes, or bonds, such securities must mature in a time frame no greater than that of the securities that have been traded except where such traded securities are U.S. Treasury Bills, such obligations must be satisfied with the posting of "comparable securities" and/or cash only.