

functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: March 2, 2006.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E6-3329 Filed 3-8-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 34-53406; IA-2492]

### Notice of Broker-Dealer/Investment Adviser Study

On March 3, 2006, Chairman Christopher Cox announced that a study will be commenced to compare the levels of protection afforded retail customers of financial service providers under the Securities Exchange Act and the Investment Advisers Act and to address any investor protection concerns arising from material differences between the two regulatory regimes.

This study is part of the Commission's "commit[ment] to pursuing the most effective solutions to \* \* \* vital issues"<sup>1</sup> raised in the course of the promulgation in April 2005 of Rule 202(a)(11)-1 (the "IA/BD rule"). *Certain Broker-Dealers Deemed Not To Be Investment Advisers*, Investment Advisers Act Release No. 2376 (Apr. 12, 2005), 70 FR 20424 (Apr. 19, 2005). The IA/BD rule provides an exception from the Investment Advisers Act for broker-dealers receiving compensation other than commissions—such as fees that are fixed dollar amounts—for full-service brokerage programs that include advice about securities. Under the rule, when

a broker-dealer charges an asset-based or fixed fee, it is excepted from the Advisers Act so long as its advice is solely incidental to brokerage and it makes certain disclosures. The rule also provides guidance about the sort of advice that will not be considered solely incidental to brokerage—such as when a broker-dealer exercises investment discretion over an account.

The IA/BD rule was the subject of a large number of comments, but, as the Commission noted in the release adopting the rule, many of the concerns voiced by commenters went "well beyond the scope of the rulemaking"<sup>2</sup> and implicated matters that might "more appropriately fall under broker-dealer regulation."<sup>3</sup> Accordingly, the staff was directed to report on recommendations for a study to look into these issues.<sup>4</sup> After considering the staff's recommendations and consulting with the other Commissioners, Chairman Cox determined that a study will be conducted to address the issues specified in the IA/BD release.

Dated: March 3, 2006.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-3332 Filed 3-8-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53405; File No. SR-FICC-2005-22]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Provide for the Payment of Interest on Cash Clearing Fund Collateral Posted by Members of the Government Securities Division and to Provide for the Payment of Interest on the Basic Deposit Portion of the Participants' Fund Posted by Members of the Mortgage-Backed Securities Division

March 3, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 23, 2005, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on February 17, 2006, and February 27,

2006, amended<sup>2</sup> the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(4) thereunder<sup>4</sup> whereby the proposal became effective upon filing with the Commission. 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 amending (i) the rules of its Government Securities Division ("GSD") to provide for payment of interest on cash clearing fund collateral posted by members and (ii) the rules of its Mortgage-Backed Securities Division ("MBSD") to provide for the payment of interest on the Basic Deposit component of participants' fund collateral posted by members. FICC is also proposing technical changes to the provisions in the GSD's and MBSD's rules regarding the payment of interest on members' cash deposits.

#### 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>5</sup>

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

The proposed rule change provides for the payment of interest on cash clearing fund collateral posted by GSD members and payment of interest on the Basic Deposit component of participants' fund collateral posted by MBSD members.

The GSD requires that all netting members maintain a portion of their clearing fund deposit in cash.<sup>6</sup> FICC

<sup>2</sup> The amendments clarified the type of securities in which cash contained in the participants' fund may be invested.

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

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

<sup>5</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>6</sup> See GSD Rule 4, Section 4.

<sup>1</sup> *Certain Broker-Dealers Deemed Not To Be Investment Advisers*, Investment Advisers Act Release No. 2376 (Apr. 12, 2005), 70 FR 20424, 20442 (Apr. 19, 2005).

<sup>2</sup> *Id.* at 20442.

<sup>3</sup> *Id.* at 20424.

<sup>4</sup> *Id.* at 20442.

<sup>5</sup> 15 U.S.C. 78s(b)(1).

currently retains the interest earned on those balances and effectively pays the interest income to GSD members through its rebate process.<sup>7</sup> Among all the subsidiary clearing agencies of The Depository Trust and Clearing Corporation (DTCC), only FICC's GSD does not pay the interest earned on clearing fund cash balances directly to its members.<sup>8</sup>

In order to more fairly distribute interest earned on the GSD cash portion of the clearing fund and to implement a uniform policy across DTCC, FICC is proposing to begin crediting interest earned on clearing fund cash balances to GSD members on a periodic basis. FICC will begin accruing the interest in this regard on January 1, 2006.<sup>9</sup>

While the MBSD currently pays interest on participants' fund cash directly to its participants, it retains the interest on a small portion of the participants' fund called the Basic Deposit.<sup>10</sup> FICC believes that to be consistent with the GSD rule change and the practice observed for all other cash deposits, the MBSD rule should be amended to also provide for the payment of interest earned on the Basic Deposits to be paid to participants. FICC is proposing to begin accruing the interest in this regard on January 1, 2006.<sup>11</sup>

FICC is also proposing technical changes to the provision in the MBSD's rules regarding the investment of participants' fund cash and to the provision in the GSD's rules regarding the investment of clearing fund cash to make the rules on investing cash deposits uniform with that of its affiliate, The Depository Trust Company. Specifically, FICC is clarifying that cash contained in the clearing fund or participants' fund may be partially or wholly invested by FICC for its account in securities issued or

guaranteed as to principal and interest by the United States or agencies or instrumentalities of the United States or repurchase agreements relating to securities issued or guaranteed as to principal and interest by the United States or agencies and instrumentalities of the United States.

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>12</sup> and the rules and regulations thereunder applicable to FICC because it will enable FICC to more fairly distribute the payment of interest on cash collateral to its members. As such, the proposed rule change effects a change in an existing service that does not adversely affect the safeguarding of securities or funds in the custody or control of FICC and does not significantly affect the respective rights or obligations of FICC or persons using its service.

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

FICC does not believe that the proposed rule change will have an 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**

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and Rule 19b-4(f)(4)<sup>14</sup> thereunder because the rule effects a change in an existing service that: (i) 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; and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change,<sup>15</sup> 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. 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-2005-22 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-FICC-2005-22. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filings 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>. 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

last amendment to the proposed rule change was filed with the Commission. 15 U.S.C. 78s(b)(3)(C).

<sup>7</sup> The GSD's rebate policy is detailed in the GSD Fee Schedule, Section XII ("Capital Base, Pricing, and Rebate Policy"). It reads, in pertinent part, that FICC "will rebate excess net income to members, pro rata, at periodic intervals deemed appropriate by, and at the discretion of, the Corporation based upon their gross fees paid to the Corporation within the applicable rebate period."

<sup>8</sup> While FICC's MBSD pays interest on participants' fund cash to its participants, it currently retains interest on a small portion of the participants' fund. This is discussed further below.

<sup>9</sup> FICC will announce by Important Notice the date of the first payment of interest to members and the frequency of the payments of interest going forward.

<sup>10</sup> The Basic Deposit is a relatively small amount that is required to be paid in cash by each clearing participant and is meant to protect FICC against a participant's failure to pay its MBSD fees.

<sup>11</sup> FICC will announce by Important Notice the date of the first payment of interest to members and the frequency of the payments of interest going forward.

<sup>12</sup> 15 U.S.C. 78q-1.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(4).

<sup>15</sup> For purposes of calculating the sixty day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on the date on which the

should refer to File Number SR-FICC-2005-22 and should be submitted on or before March 30, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-3327 Filed 3-8-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53400; File No. SR-OCC-2006-01]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Revise Option Adjustment Methodology

March 2, 2006.

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, 2006, The Options Clearing Corporation ("OCC") 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 by OCC. 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

OCC is seeking to amend Article VI (Clearance of Exchange Transactions), Section 11A of OCC's By-Laws to (1) eliminate the need to round strike prices and/or units of trading in the event of certain stock dividends, stock distributions, and stock splits and (2) provide for the adjustment of outstanding options for special dividends (*i.e.*, cash distributions not declared pursuant to a policy or practice of paying such distributions on a quarterly or other regular basis). The proposed rule change would also add a \$12.50 per contract threshold amount for cash dividends and distributions to trigger application of OCC's adjustment rules.

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

In its filing with the Commission, OCC 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. OCC 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

##### A. Changes Relating to Adjustments for Certain Stock Dividends, Stock Distributions, and Stock Splits

OCC's By-Laws currently specify two alternative methods of adjusting for stock dividends, stock distributions, and stock splits. In cases where one or more whole shares are issued with respect to each outstanding share, the number of outstanding option contracts is correspondingly increased and strike prices are proportionally reduced.<sup>3</sup> In all other cases, the number of shares to be delivered under the option contract is increased and the strike price is reduced proportionately.<sup>4</sup>

Although these two methods have been used since the inception of options trading, in certain circumstances either method can produce a windfall profit for one side and a corresponding loss for the other due to rounding of adjusted strike prices. These profits and losses, while small on a per-contract basis, can be significant for large positions. Because equity option strike prices are currently stated in eighths, OCC's By-Laws require adjusted strike prices to be rounded to the nearest eighth. For example, if an XYZ \$50 option for 100 shares were to be adjusted for a 3-for-2 split, the deliverable would be increased to 150 shares and the strike price would be adjusted to \$33.33, which would then be rounded up to \$33<sup>3</sup>/<sub>8</sub>. Prior to the adjustment, a call holder would have had to pay \$5,000 to exercise ( $50 \times 100$  shares). After the adjustment, the caller has to pay \$5,006.25 for the equivalent stock position ( $\$33.375 \times 150$  shares). Conversely, an exercising put holder would receive \$5,006.25 instead of \$5,000. The \$6.25 difference represents

a loss for call holders and put writers and a windfall for put holders and call writers.

A loss/windfall can also occur when the split results in a fractional deliverable (*e.g.*, when a 4-for-3 split produces a deliverable of 133.3333 shares). In those cases, OCC's By-Laws currently require that the deliverable be rounded down to eliminate the fraction, and if appropriate, the strike price be further adjusted to the nearest eighth to compensate for the diminution in the value of the contract resulting from the elimination of the fractional share. However, even if these steps are taken, small rounding inequities may remain.

The windfall profits and correspondent losses resulting from the rounding process have historically been accepted as immaterial. Due to recent substantial increases in trading volume and position size, however, they have become a source of concern to exchanges and market participants. In addition, OCC has been informed that some traders may be exploiting announcements of splits and similar events by quickly establishing positions designed to capture rounding windfalls at the expense of other market participants.

The inequity that results from the need to round strike prices can be eliminated by using a different adjustment method: Namely, adjusting the deliverable but not the strike prices or the values used to calculate aggregate exercise prices and premiums. As an illustration of the proposed adjustment methodology, in the XYZ \$50 option 3-for-2 split example described above, the resulting adjustment would be a deliverable of 150 shares of XYZ stock while the strike price would remain at \$50. In this case, the presplit multiplier of 100, used to extend aggregate strike price and premium amounts, is unchanged. For example, a premium of 1.50 would equal \$150 ( $1.5 \times 100$ ) both before and after the adjustment. An exercising call holder would continue to pay \$50 times 100 (for a total of \$5,000) but would receive 150 shares of XYZ stock instead of 100.<sup>5</sup> This is the method currently used for property distributions such as spin-offs and special dividends large enough to require adjustments under OCC's By-Laws.

The inequity that results from the need to eliminate fractional shares from

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

<sup>3</sup> For example, in the event of a 2-for-1 split, an XYZ \$60 option calling for the delivery of 100 shares of XYZ stock would be subdivided into two XYZ \$30 options, each calling for the delivery of 100 shares of XYZ stock.

<sup>4</sup> For example, in a 3-for-2 split, an XYZ \$60 option calling for the delivery of 100 shares would be adjusted to call for the delivery of 150 shares and the strike price would be reduced to \$40.

<sup>5</sup> The same adjustment methodology would apply to reverse stock splits or combination of shares. For example, in a 3-for-4 reverse stock split on a XYZ \$50 option calling for the delivery of 100 shares, the resulting adjustment would be a deliverable of 75 shares of XYZ stock while the strike price would remain at \$50.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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