required by the federal securities laws and rules.

Conclusion

It is therefore ordered, that issuers or sponsors who pay an Optional Incentive Fee are hereby exempted from Rule 102 of Regulation M solely to permit the payment of the Optional Incentive Fee as set forth in New Rule 8.800 in connection with a security participating in the Program during the pilot, subject to the conditions contained in this order and compliance with the requirements of New Rule 8.800.

This exemption is subject to the following conditions:

1. The security participating in the Program is an ETP and the secondary market price for shares of the ETP must not vary substantially from the net asset value of such ETP shares during the duration of the security's participation in the Program;

2. The issuer of the participating ETP, or sponsor on behalf of the issuer, must provide prompt notice to the public by broadly disseminating a press release prior to entry (or upon re-entry) into the Program. This press release must disclose:

a. The payment of an Optional Incentive Fee is intended to generate more quotes and trading than might otherwise exist absent this payment, and that the security leaving the Program may adversely impact a purchaser's subsequent sale of the security; and

b. A hyperlink to the Web page described in condition (5) below;

3. The issuer of the participating ETP, or sponsor on behalf of the issuer, must provide prompt notice to the public by broadly disseminating a press release prior to a security leaving the Program for any reason, including termination of the Program. This press release must disclose:

a. The date that the security is leaving the Program and that leaving the Program may have a negative impact on the price and liquidity of the security which could adversely impact a purchaser's subsequent sale of the security; and

b. A hyperlink to the Web page described in condition (5) below;

4. In place of the press releases required by conditions (2) and (3) above, an issuer of a participating ETP that is not registered under the 1940 Act, or sponsor on behalf of the issuer, may provide prompt notice to the public through the use of such other written Regulation FD compliant methods (other than Web site disclosure only) that is designed to provide broad public dissemination as provided in 17 CFR 243.101(e) *provided, however,* that such other methods must contain all the information required to be disclosed by conditions (2) and (3) above;

5. The issuer of the participating ETP, or sponsor on behalf of the issuer, must provide prompt, prominent and continuous disclosure on its Web site in the location generally used to communicate information to investors about a particular security participating in the Program, and for a security that has a separate Web site, the security's Web site of:

a. The security participating in the Program and ticker, date of entry into the Program, and the amount of the Optional Incentive Fee;

b. Risk factors investors should consider when making an investment decision, including that participation in the Program may have potential impacts on the price and liquidity of the security; and

c. Termination date of the pilot, anticipated date (if any) of the security leaving the Program for any reason, date of actual exit (if applicable), and that the security leaving the Program could adversely impact a purchaser's subsequent sale of the security; and

6. The Web site disclosure in condition (5) above must be promptly updated if a material change occurs with respect to any information contained in the disclosure.

This exemptive relief expires when the pilot terminates, and is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. This exemptive relief is limited solely to the payment of the Optional Incentive Fee as set forth in New Rule 8.800 for a security that is an ETP participating in the Program,[30] and does not extend to any other activities, any other security of the trust related to the participating ETP, or any other issuers.[31] In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order does not represent Commission views with respect to any other question that the proposed activities may raise, including, but not limited to the adequacy of the disclosure required by federal securities laws and rules, and the applicability of other federal or state laws and rules to, the proposed activities.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

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[30] All ETPs that are allowed to participate in the Program have a pool of underlying assets. *See* New Rule 8.800(a)(2). Should the program be modified to include other ETPs, such as exchange-traded notes, that do not have a pool of underlying assets, the Commission would consider this a material change and outside the scope of this exemptive relief.

[31] Other activities, such as ETP redemptions, are not covered by this exemptive relief.

[32] 17 CFR 200.30–3(a)(6).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69708; File No. SR–FICC–2013–01]

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend the Mortgage-Backed Securities Division Rule To Reflect Recommendations of the Treasury Market Practice Group

June 6, 2013.

I. Introduction

On April 15, 2013, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2013–01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on April 29, 2013.[3] The Commission received no comment letters. This order approves the proposed rule change.

II. Description

To address the persistent settlement fails in agency debt and mortgage-backed securities (''MBS'') transactions and to encourage market participants to resolve such fails promptly, the Treasury Market Practices Group (''TMPG'') recommended in February 2012 that the MBS market impose a fails charge.[4] FICC's Mortgage-Backed Securities Division (''MBSD'') amended Rule 12 (Fails Charges) of MBSD's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69424 (April 22, 2013), 78 FR 25115 (April 29, 2013).

[4] The TMPG is a group of market participants active in the treasury securities market sponsored by the Federal Reserve Bank of New York.

Clearing Rules in March 2012 to reflect TMPG's recommendations.[5] The fails charge for MBS transactions applies to certain trades settled in the MBSD central counterparty (''CCP'') (*i.e.*, settlement of pools versus FICC involving failing agency MBS issued or guaranteed by Fannie Mae, Freddie Mac, and Ginnie Mae.) Consistent with the TMPG's initial recommendation, MBSD's Rule 12 did not impose a fails charge if delivery occurred on either of the two business days following the contractual settlement date. The two business days are sometimes referred to as the ''resolution period.''

However, on March 1, 2013, the TMPG issued a new recommendation to remove the two-day resolution period from the current practice.[6] The TMPG has advised that the revised recommendation should apply to transactions in agency MBS transactions entered into on or after July 1, 2013, as well as to transactions that were entered into prior to but remain unsettled as of July 1, 2013. This rule change amends the existing fails charge rule to reflect TMPG's most recent recommendation by removing the two-day resolution period provision from the rule. Consequently, an agency MBS settlement fail will be subject to a fails charge for each calendar day that the fail is outstanding, even if the delivery occurs on either of the first two business days following the contractual settlement date. FICC is making the rule change effective as of July 1, 2013, in accordance with the TPMG's recommendation. All other provisions of the agency MBS fails charge rule, including the fails charge rate and trading practices, remain unchanged.

III. Discussion

Section 19(b)(2)(C) of the Act[7] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[8] The Commission finds that FICC's rule change should facilitate the prompt and accurate clearance and settlement of securities transactions because the rule change will discourage persistent settlement fails in agency debt and MBS transactions and encourage market participants to resolve such fails promptly.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly with the requirements of Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–FICC–2013–01) be and hereby is approved.[10]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

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[5] *See* Securities Exchange Act Release No. 66550 (March 9, 2012), 77 FR 15155 (March 14, 2012) (File No. SR–FICC–2008–01).

[6] Press Release, Federal Reserve Bank of New York, TMPG Revises Agency MBS Fails Charge Trading Practice (March 1, 2013) (available at *www.newyorkfed.org/tmpg/03_01_2013_Fails_charges_press_release.pdf).*

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78s(b)(2).

[10] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69709; File No. SR–FICC–2013–03]

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend Mortgage-Backed Securities Division Rules Relating To Allocation of an Indemnity Claim Made in Connection With the Use of the Federal Reserve's National Settlement Service

June 6, 2013.

I. Introduction

On April 15, 2013, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2013–03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on April 29, 2013.[3] The Commission received no comment letters. This order approves the proposed rule change.

II. Description

FICC's Government Securities Division (''GSD'') and Mortgage-Backed Securities Division (''MBSD'') each use the Board of Governors of the Federal Reserve's (''FRB'') National Settlement Service (''NSS'') for Funds-Only Settlement[4] and Cash Settlement[5] purposes, respectively. GSD's Rule 13 and MBSD's Rule 11 address the situation where the FRB makes an indemnity claim in connection with the use of the NSS service by FICC. Pursuant to the GSD and MBSD rules, if FICC receives an FRB indemnity claim, FICC will apportion the entire liability to the GSD netting members or MBSD clearing members, as applicable, for whom the settling bank was acting at the time.[6] If such amounts are not sufficient to fully satisfy the FRB indemnity claim, each of the GSD and MBSD rules currently provide different directives as to how FICC should handle the remaining loss. The GSD rules state that FICC will treat the remaining loss as an ''Other Loss,'' as defined in GSD Rule 4, and allocate accordingly.[7] In contrast, MBSD Rule 11, Section 5(o), states that FICC will allocate the remaining loss among all MBSD clearing members in proportion to their relative use of the MBSD services (based on fees).

The purpose of the rule change is to correct MBSD's Rule 11 in order to accurately reflect the correct manner in which FICC should allocate an indemnity claim made in connection with the use of the FRB's NSS. The MBSD provision in Rule 11 was drafted prior to the MBSD becoming a central counterparty and adopting a loss mutualization process similar to the GSD process. When FICC filed its rule change to provide guaranteed settlement

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69434 (April 23, 2013), 78 FR 25121 (April 29, 2013).

[4] ''Fund-Only Settlement Amount'' is defined under Rule 1 of GSD's Rulebook as the net dollar amount of a netting member's obligation, calculated pursuant to GSD's Rule 13, either to make a funds-only payment to GSD or to receive a funds-only payment from GSD. *See* GSD Rule 13 for the rules related to funds-only settlement.

[5] ''Cash Settlement'' is defined under Rule 1 of MBSD's Clearing Rules as the payment each business day by MBSD to a member or by a member to MBSD. See MBSD Rule 11 for the rules related to cash settlement.

[6] See GSD's Rule 13 Section 5(o) and MBSD Rule 11, Section 5(o).

[7] Rule 4(f) of GSD's Rulebook.