

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>15</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>16</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>17</sup> of the Act to determine whether the proposed rule change should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2013-55 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2013-55. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-NYSEMKT-2013-55 and should be submitted on or before August 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69972; File No. SR-FICC-2013-05]

**Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Include trueEX LLC as a Designated Locked-In Trade Source Pursuant to the Rulebook of the Government Securities Division**

July 11, 2013.

On May 15, 2013, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2013-05 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> The proposed rule change was published for comment in the *Federal Register* on June 4, 2013.<sup>3</sup> The Commission received one comment on the proposed rule change that did not address the content of the proposal.<sup>4</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

**I. Description of the Proposed Rule Change**

FICC's proposed rule change would amend the rulebook of the Government Securities Division ("GSD") to include trueEX LLC ("trueEX") as one of the GSD's designated locked-in trade sources. The GSD's rules currently provide for the submission of locked-in trades<sup>5</sup> by certain locked-in trade sources<sup>6</sup> on behalf of GSD members. Currently, the GSD's designated locked-in trade sources are the following entities: (i) Federal Reserve Banks (as fiscal agents of the United States); (ii) the Federal Home Loan Mortgage

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

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

<sup>3</sup> Securities Exchange Act Release No. 69653 (May 29, 2013), 78 FR 33456 (June 4, 2013) (SR-FICC-2013-05).

<sup>4</sup> Email submission by Laura Skinner (June 10, 2013), available at <http://www.sec.gov/comments/sr-ficc-2013-05/ficc201305-1.htm>.

<sup>5</sup> The GSD's rulebook defines the term "Locked-In Trade" as "a trade, involving Eligible Securities, that is deemed a Compared Trade once the data on such trade is received from a single, designated source and meets the requirements for submission of data on a Locked-In Trade pursuant to [the GSD's] Rules, without the necessity of matching the data regarding the trade with data provided by each Member that is or is acting on behalf of an original counterparty to the trade." GSD Rulebook, Rule 1, p.33.

<sup>6</sup> The GSD Rulebook defines the term "Locked-in Trade Source" as "a source of data on Locked-In Trades that the Corporation has so designated, subject to such terms and conditions as to which the Locked-In Trade Source and the [GSD] may agree." GSD Rulebook, Rule 1, p.33.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

Corporation (“Freddie Mac”); (iii) GCF-Authorized Inter-Dealer Brokers;<sup>7</sup> (iv) the U.S. Department of the Treasury; and (v) New York Portfolio Clearing, LLC.

trueEX is an electronic exchange for interest rate swaps, and has been designated a contract market by the Commodity Futures Trading Commission.<sup>8</sup> The swap transactions executed by trueEX are cleared by a clearinghouse other than the GSD, but in the event one of these swap transactions results in the physical delivery of the underlying instrument,<sup>9</sup> the GSD will clear and settle the exchange of that instrument in certain instances.<sup>10</sup> Accordingly, for the delivery-versus-payment (“DVP”)<sup>11</sup> leg of these physical delivery transactions, trueEX will offer members who are also members of GSD the ability to have such transactions submitted to the GSD by trueEX as netting-eligible transactions (e.g., as Treasury DVP transactions). In its capacity as a designated locked-in trade source, trueEX will transmit transactions to the GSD throughout the day by submitting single tickets in a batch format. Once trueEX transmits a locked-in trade to the GSD, the GSD will process the trade normally, along with the respective GSD member’s other DVP trades. Because the ticket submitted by trueEX lists trueEX as the submitter on behalf of two GSD counterparties, the single-ticket format ensures that trueEX will not have a resulting settlement obligation, even though it is a party to the trade.<sup>12</sup> If trueEX is approved as a locked-in trade source by the GSD

during the onboarding phase,<sup>13</sup> it will be the first designated contract market<sup>14</sup> to act as a locked-in trade source for the GSD.

As is the case with other locked-in trade submissions accepted by the GSD, GSD members will be required to execute appropriate documentation evidencing to the GSD their authorization of trueEX to submit trades on their behalf. The GSD will notify members of the availability of this documentation via Important Notice.

## II. Discussion

Section 19(b)(2)(C) of the Act<sup>15</sup> 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<sup>16</sup> requires, among other things, that the rules of a clearing agency be designed to achieve several goals, including (i) Promoting the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, (ii) assuring the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible, and (iii) protecting investors and the public interest.

The Commission concludes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. The Commission believes that adding trueEX as a source of locked-in trades for the GSD will promote the prompt and accurate clearance and settlement of securities transactions by expediting the GSD’s receipt of accurate trade data. In the absence of a locked-in trade source, trades must be compared bilaterally, which requires that both parties to the transaction independently transmit trade information to the GSD.<sup>17</sup> This

confirmation process can occasion delays when the parties fail to submit trade information in a timely fashion, or when they submit inaccurate or incomplete information that the GSD must then verify. The Commission believes that allowing the GSD to accept trade information from trueEX on a locked-in basis will help the GSD process transactions more rapidly, and will enhance the accuracy of the trade information the GSD uses in performing its clearing services.

In addition, the Commission believes that allowing trueEX to serve as a locked-in trade source is generally consistent with the safeguarding of the securities and funds in the GSD’s control, or for which it is responsible.<sup>18</sup> Trades originating on the trueEX exchange will remain subject to all of the GSD’s normal risk management procedures, which include marking member portfolios to the market on an intraday basis and charging variation margins accordingly.<sup>19</sup> These risk management procedures should help ensure the safety of the securities and funds handled by the GSD in connection with transactions effected on the trueEX exchange.

Finally, the Commission believes that trueEX satisfies the general criteria for serving as a locked-in trade source to the GSD, provided the GSD determines that trueEX meets all of the GSD’s applicable onboarding protocols. The Commission has previously determined that the GSD may utilize locked-in comparison for trades executed on a “pure electronic trading system that is [computer] terminal-driven” and which permits “no discretion over trade details . . . once the trade is submitted.”<sup>20</sup> trueEX meets all of these requirements. The trueEX exchange is exclusively an electronic trading platform, and counterparties executing trades there may not unilaterally modify or cancel trades once trueEX has matched them.<sup>21</sup>

comparison, it “must receive data from the long and short sides of the trade” and that, with certain limited exceptions, “there must be an exact match of all Required Match Data submitted on the trade . . .”).

<sup>18</sup> See 15 U.S.C. 78q-1(b)(3)(F) (requiring that the rules of a clearing agency be designed to “assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.”).

<sup>19</sup> See GSD Rulebook, Rule 4, Section 2a, p.89.

<sup>20</sup> Securities Exchange Act Release No. 44946 (October 17, 2001), 66 FR 53816, 53817 (October 24, 2001) (SR-GSCC-2001-01) (internal quotation marks omitted).

<sup>21</sup> As with bilateral trades, counterparties to a locked-in trade may submit a “DK Notice” for any trades they believe to be “invalid or incorrect.” See GSD Rulebook Rule 6C, Section 6. But, unlike with bilateral trades, the GSD considers a DK Notice in the context of a locked-in trade to be “a request for

<sup>7</sup> The GSD Rulebook defines the term “GCF-Authorized Inter-Dealer Broker” as “an Inter-Dealer Broker Netting Member that the [GSD] has designated as eligible to submit to the [GSD] data on GCF Repo Transactions on a Locked-In Basis.” GSD Rulebook, Rule 1, p.27.

<sup>8</sup> See *In the Matter of the Request of trueEX LLC for Designation as a Contract Market* (September 25, 2012) (approving trueEX’s application for designation as a contract market), available at <http://www.cftc.gov/ucm/groups/public/@otherif/documents/ifdocs/trueexapplicationorder.pdf>.

<sup>9</sup> Generally, fewer than 3% of interest rate swaps result in a physical delivery when they are unwound.

<sup>10</sup> The GSD would clear only those transactions involving the physical delivery of U.S. Treasury bills, notes, bonds, Treasury inflation-protected securities (TIPS) and separate trading of registered interest and principal securities (STRIPS), as well as federal agency notes, bonds and zero-coupon securities that are book-entry, Fedwire eligible and non-mortgage backed.

<sup>11</sup> Delivery-versus-payment is a settlement procedure in which the buyer’s cash payment for the securities it has purchased is due at the time the securities are delivered.

<sup>12</sup> In its capacity as a locked-in trade source, trueEX will initially not be subject to any fees pursuant to the existing GSD Rules. The GSD may, however, consider imposing a fee on certain locked-in trade sources in the future based on volumes and processing costs.

<sup>13</sup> During the onboarding phase, trueEX will be subject to the GSD’s existing due diligence process, including testing trueEX’s trade input and receipt of output capabilities prior to the go-live date.

<sup>14</sup> Designated contract markets are exchanges that may list for trading both futures and option contracts based on all types of commodities, and that may allow access to their facilities by all types of traders, including retail customers. See <http://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/index.htm>.

<sup>15</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>17</sup> The bilateral comparison process requires that both counterparties to the trade submit trade details to the GSD, and that the details submitted by the parties either match or fall within predefined parameters. See GSD Rulebook, Rule 6A (providing that, for the GSD to process a trade for bilateral

### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly those set forth in Section 17A,<sup>22</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (File No. SR-FICC-2013-05) be, and hereby is, approved.<sup>24</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69975; File No. SR-NYSE-2013-45]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List To Change the Monthly Fees For the Use of Certain Ports

July 11, 2013.

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> notice is hereby given that, on June 28, 2013, New York Stock Exchange LLC (the “Exchange” or “NYSE”) 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 the Exchange. 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 Exchange proposes to amend its Price List to change the monthly fees for

cancellation” to the locked-in trade source. *See id.*; see also GSD Rulebook, Rule 1, p.19. Thus, only trueEX may modify or cancel a trade in response to a DK Notice. *See* GSD Rulebook Rule 6C, Section 10.

<sup>22</sup> 15 U.S.C. 78q-1.

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> In approving the proposed rule change, the Commission considered the proposal’s impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

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

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

the use of certain ports. The Exchange proposes to implement the fee changes on July 1, 2013. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to amend its Price List to change the monthly fees for the use of certain ports.<sup>3</sup> The Exchange proposes to implement the fee changes on July 1, 2013.<sup>4</sup>

The Exchange currently makes ports available that provide connectivity to the Exchange’s trading systems (i.e., ports for entry of orders and/or quotes (“order/quote entry ports”)) and charges \$200 per port per month.<sup>5</sup> The Exchange

<sup>3</sup> The Exchange has a Common Customer Gateway (“CCG”) that accesses the equity trading systems that it shares with its affiliates, NYSE MKT LLC (“NYSE MKT”) and NYSE Arca, Inc. (“NYSE Arca”), and all ports connect to the CCG. *See, e.g.*, Securities Exchange Act Release No. 64542 (May 25, 2011), 76 FR 31659 (June 1, 2011) (SR-NYSE-2011-13). All NYSE member organizations are also NYSE MKT member organizations and, accordingly, a member organization utilizes its ports for activity on both NYSE and/or NYSE MKT and is charged port fees based on the total number of ports connected to the CCG, whether the ports are used to quote and trade on NYSE, NYSE MKT, and/or both, because those trading systems are integrated. The NYSE Arca trading platform is not integrated in the same manner. Therefore, it does not share its ports with NYSE or NYSE MKT.

<sup>4</sup> The Exchange notes that billing for ports is based on the number of ports on the third business day prior to the end of the month. In addition, the level of activity with respect to a particular port does not affect the assessment of monthly fees, such that, except for ports that are not charged, even if a particular port is not used, a port fee still applies.

<sup>5</sup> The Price List provides that (i) users of the Exchange’s Risk Management Gateway service (“RMG”) are not charged for order/quote entry ports if such ports are designated as being used for RMG purposes, and (ii) Designated Market Makers (“DMMs”) are not charged for order/quote entry

proposes that the \$200 fee per port per month would apply to users with five or fewer order/quote entry ports and that the fee for users with more than five order/quote entry ports would be \$500 per port per month, including for the first five ports.<sup>6</sup> The Exchange is proposing this change in order to permit the Exchange to offset, in part, its infrastructure costs associated with making such ports available. The proposed change would also encourage users to become more efficient with, and reduce the number of, their order/quote ports, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize with respect to managing its own infrastructure. In this regard, as users decrease the number of order/quote ports that they utilize, the Exchange would similarly be able to decrease the amount of its hardware that it is required to support to interface [sic] with such ports.

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange’s statement regarding the burden on competition.

ports that connect to the Exchange via the DMM Gateway. *See* Securities Exchange Act Release No. 68229 (November 14, 2012), 77 FR 69688 (November 20, 2012) (SR-NYSE-2012-60). Two methods are available to DMMs to connect to the Exchange: DMM Gateway and CCG. The two methods are quite distinct, however. Only DMMs may utilize the DMM Gateway, and they may only use DMM Gateway when acting in their capacity as a DMM. DMMs are required to use the DMM Gateway for certain DMM-specific functions that relate to the DMM’s role on the Exchange and the obligations attendant therewith, which are not applicable to other market participants on the Exchange. By contrast, non-DMMs as well as DMMs may use the CCG, use of the CCG by a DMM is optional, and a DMM that connects to the Exchange via CCG can use the relevant order/quote entry port for orders and quotes both in its capacity as a DMM and for orders and quotes in other securities. Accordingly, because DMMs are required to utilize DMM Gateway, but not CCG, to be able to fulfill their functions as DMMs, DMMs are not charged for order/quote entry ports that connect to the Exchange via the DMM Gateway, but DMMs, like other market participants, are charged for order/quote entry ports that connect to the Exchange via the CCG. DMMs can elect to use the DMM Gateway, the CCG, or both for their connectivity to the Exchange. However, the DMM Gateway must be used for certain DMM-specific functions that relate to the DMM’s role on the Exchange and the obligations attendant therewith.

<sup>6</sup> For example, a user with five ports would be charged \$200 per port per month for a total of \$1,000 per month for all five ports. A user with six ports would be charged \$500 per port per month, including for the first five ports, for a total of \$3,000 per month for all six ports.