

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51095; File No. SR-FICC-2005-04)

January 28, 2005

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify Timing of Premium Assessment Pursuant to Rule 3 of the Government Securities Division for Violation of Minimum Financial Standards

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on January 25, 2005, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) 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

The purpose of the proposed rule change is to clarify that the premium to be assessed pursuant to Rule 3 of the Government Securities Division (“GSD”) for violation of minimum financial standards will begin to be assessed on the date FICC becomes aware of the violation.

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

¹ 15 U.S.C. 78s(b)(1).

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.²

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

Recently, the Commission approved a proposed rule change by FICC to amend Rule 3 of the GSD to modify the penalty assessment process for violations of minimum financial standards.³ Pursuant to a provision under GSD Rule 3, which is scheduled to become effective on January 31, 2005,⁴ a violation of a minimum financial standard by certain netting members will result in the imposition of a clearing fund premium which will continue for ninety calendar days after the later of (i) the member's return to compliance with applicable minimum financial standards or (ii) FICC's discovery of the violation. The purpose of this proposed rule change is to clarify that the required clearing fund deposit premium that will be assessed pursuant to Rule 3 of the GSD for violation of 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.

The proposed rule change is consistent with the requirements of Section 17A of the Act⁵ and the rules and regulations thereunder applicable to FICC because it assures the safeguarding of securities and funds which are in the custody or control of FICC by

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

³ Securities Exchange Act Release No. 50659 (November 15, 2004), 69 FR 67767 (November 19, 2004)[File No. SR-FICC-2004-11].

⁴ This effective date was announced to the GSD's members in Important Notice GOV.156.04 (November 22, 2004) which is available on FICC's website at <http://www.ficc.com>.

⁵ 15 U.S.C. 78q-1.

encouraging 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 maintain a financially sound participant base should be enhanced.

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

FICC does not believe that the proposed rule change will have any impact on 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

No written comments relating to the proposed rule change have 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 rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act⁶ and Rule 19b-4(f)(1)⁷ thereunder because the proposed rule constitutes an interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, 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.

⁶ 15 U.S.C. 78s(b)(3)(A)(i).

⁷ 17 CFR 240.19b-4(f)(1).

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-2005-04 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-2005-04. 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://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 should refer to File Number SR-FICC-2005-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).