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For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50712; File No. SR-FICC-2004-07]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend Its Rules To Eliminate the "Mortgage Banker" Category of Membership in Its Mortgage-Backed Securities Division

November 22, 2004.

I. Introduction

On March 25, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on June 21, 2004, and October 13, 2004, amended proposed rule change File No. SR-FICC-2004-07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposed rule change was published in the **Federal Register** on October 20, 2004.² No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

II. Description

The proposed rule change amends the rules of FICC's Mortgage-Backed Securities Division ("MBSD") to eliminate the "mortgage banker" category of membership. In accordance with Article III, Rule 1, Section 2, "Financial Requirements for Participants and Limited Purpose Participants," of MBSD's Rules, mortgage bankers are subject to a

minimum net worth requirement of \$5 million. With the exception of "brokers," all other applicants are subject to a minimum net worth or regulatory net capital requirement of \$10 million.³

Historically, mortgage bankers (which generally act as mortgage originators) maintained relatively little capital. FICC considered a lower minimum capital standard appropriate to enable and encourage these types of firms to participate in FICC. The mortgage banker category of membership is now becoming obsolete for two principal reasons. First, changes in the mortgage business are causing small originators to use Fannie Mae and Freddie Mac, making MBSD membership less desirable and therefore making the relatively lower minimum capital standard less justified. Second, from a membership administration perspective there appears to be no precise, uniform definition for "mortgage banker."⁴

The proposed rule change eliminates the mortgage banker category from the MBSD Rules. Entities that would have previously qualified as mortgage bankers will now be classified under the catch-all category of membership in Article III, Rule 1, Section 1, "Applicants Eligible to Become Participants or Limited Purpose Participants."⁵ This reclassification will increase the minimum net worth requirement from \$5 million to \$10 million for these members. FICC does not anticipate that this increase will adversely affect existing mortgage banker members because member financial statements filed with FICC indicate that each mortgage banker member's capitalization currently exceeds the new minimum.

III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the

³ MBSD's Rules define "broker" as a member that is in the business of buying and selling securities as agent on behalf of dealers. Brokers are currently subject to a minimum net or liquid capital requirement of \$5 million.

⁴ Mortgage originators are state-regulated entities, and definitions of such entities vary with each state. Generally, these definitions target entities whose "primary" business is the issuance of mortgages. MBSD has historically classified entities as mortgage bankers based upon an applicant's representations made in its membership application and confirmed by management's review of the applicant's business.

⁵ Article III, Rule 1, Section 1(f) provides a catch-all category for membership for "firms in such other categories as the Corporation [FICC] from time to time may determine." The proposed rule change was amended to add language to Addendum A of the MBSD Rules to clarify that entities that are deemed to be mortgage bankers would be considered to be one of the various entity types that fall under the catch-all category of membership.

rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.⁶ The Commission finds that FICC's proposed rule change is consistent with this requirement because by removing the mortgage banker category from the MBSD Rules and by providing that entities that currently are classified as such meet a higher minimum financial requirement, it enhances the ability of FICC to maintain a financially sound membership base without an adverse effect on itself or its members.

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,⁷ that the proposed rule change (File No. SR-FICC-2004-07) be and hereby is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50710, File No. SR-NASD-2004-157]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Performance Leveraged Upside Securities Linked to the Russell 2000 Index

November 19, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 21, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² CFR 240.19b-4.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 50536 (October 13, 2004), 69 FR 61699.