

registered traders in the trading crowd make a bid or offer within the APQ (a priority bid or offer), or (2) one or more brokers in the crowd make a bid or offer that is on parity with the APQ (a parity bid or offer). Auto-Ex will be turned-on again when all members signed-on to Auto-Ex in the crowd are on parity and no broker is making a parity bid or offer.

(vi) Auto-Ex will not occur on the bid or offer (as appropriate) in the event that the APQ on that side of the market is for less than 200 shares.

(vii) Auto-Ex will not occur when the order book on the Amex is locked or crossed with the APQ.

(viii) Auto-Ex will not occur with respect to an incoming Auto-Ex Eligible All Or None or Institutional Order in the event that there is insufficient size to execute the order in full at one price.

(ix) Auto-Ex will not occur if the execution of the incoming order would elect a stop order on the order book.

(x) Auto-Ex will not occur if the specialist is in the process of executing an order in the security.

(xi) Auto-Ex will not occur in one or more securities when the specialist, in conjunction with a Floor Governor or two Floor Officials, determine(s) that (1) quotes are not reliable, (2) the Exchange is experiencing communications or systems problems, "Unusual Market Conditions" as described in Amex Rule 115, or delays in the dissemination of quotes, or (3) the market(s) where the underlying securities trade (or Nasdaq with respect to Nasdaq National Market Securities) are experiencing communications or systems problems, "Unusual Market Conditions" as described in SEC Rule 11Ac1-1, or delays in the dissemination of quotes.

(xii) Auto-Ex will not occur if it would cause a trade to occur through the price of an all or none order on the book.

(xiii) Auto-Ex will not occur if there are orders on both sides of the market when the order book comes out of a Pause\* condition to allow the specialist to pair-off the orders.

(xiv) Auto-Ex will not occur if the spread exceeds the Maximum Spread Value.

Auto-Ex Eligible Orders that are not automatically executed will be routed to the specialist for handling.

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\* The Commission corrected the proposed rule text to replace "Freeze" with "Pause." Telephone conversation between William Floyd-Jones, Associate General Counsel, Amex, and Ann E. Leddy, Special Counsel, Division of Market Regulation ("Division"), Commission (June 25, 2004).

## SECURITIES AND EXCHANGE COMMISSION

[Release 34-49940; File No. 600-23]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Order Approving an Extension of Temporary Registration as a Clearing Agency

June 29, 2004.

The Securities and Exchange Commission ("Commission") is publishing this notice and order to solicit comments from interested persons and to extend the Fixed Income Clearing Corporation's ("FICC") temporary registration as a clearing agency through June 30, 2005.<sup>1</sup>

On May 24, 1988, pursuant to sections 17A(b) and 19(a) of the Act<sup>2</sup> and Rule 17Ab2-1 promulgated thereunder,<sup>3</sup> the Commission granted the Government Securities Clearing Corporation ("GSCC") registration as a clearing agency on a temporary basis for a period of three years.<sup>4</sup> The Commission subsequently extended GSCC's registration through June 30, 2003.<sup>5</sup>

On February 2, 1987, pursuant to sections 17A(b) and 19(a) of the Act<sup>6</sup> and Rule 17Ab2-1 promulgated thereunder,<sup>7</sup> the Commission granted MBS Clearing Corporation ("MBSCC") registration as a clearing agency on a temporary basis for a period of 18 months.<sup>8</sup> The Commission subsequently extended MBSCC's registration through June 30, 2003.<sup>9</sup>

<sup>1</sup> On January 1, 2003, MBS Clearing Corporation ("MBSCC") was merged into the Government Securities Clearing Corporation ("GSCC") and GSCC was renamed the Fixed Income Clearing Corporation. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) File Nos. [SR-GSCC-2002-07 and SR-MBSCC-2002-01].

<sup>2</sup> 15 U.S.C. 78q-1(b) and 78s(a).

<sup>3</sup> 17 CFR 240.17Ab2-1.

<sup>4</sup> Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

<sup>5</sup> Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; 29236 (May 24, 1991), 56 FR 24852; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; 42335 (January 12, 2000), 65 FR 3509; 43089 (July 28, 2000), 65 FR 48032; 43900 (January 29, 2001), 66 FR 8988; 44553 (July 13, 2001), 66 FR 37714; 45164 (December 18, 2001), 66 FR 66957; and 46135 (June 27, 2002), 67 FR 44655.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> *Supra* note 3.

<sup>8</sup> Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

<sup>9</sup> Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 34212; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR

On July 1, 2003, the Commission issued an order extending FICC's temporary registration through June 30, 2004.<sup>10</sup>

On June 9, 2004, FICC requested that the Commission extend FICC's temporary registration until such time as the Commission is prepared to grant FICC permanent registration.<sup>11</sup>

The Commission today is extending FICC's temporary registration as a clearing agency in order that FICC may continue to provide its users clearing and settlement services as a registered clearing agency. During the third quarter of 2004, the Commission expects to publish a release requesting comment on granting FICC permanent registration as a clearing agency. FICC acts as the central clearing entity for the U.S. Government securities trading and financing marketplaces and provides for the safe and efficient clearance and settlement of transactions in mortgage-backed securities. 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 600-23 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 600-23. 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/>

50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994), 59 FR 67743; 37372 (June 26, 1996), 61 FR 35281; 38784 (June 27, 1997), 62 FR 36587; 39776 (March 20, 1998), 63 FR 14740; 41211 (March 24, 1999), 64 FR 15854; 42568 (March 23, 2000), 65 FR 16980; 44089 (March 21, 2001), 66 FR 16961; 44831 (September 21, 2001), 66 FR 49728; 45607 (March 20, 2002), 67 FR 14755; and 46136 (June 27, 2002), 67 FR 44655.

<sup>10</sup> Securities Exchange Act Release No. 48116 (July 1, 2003), 68 FR 41031.

<sup>11</sup> Letter from Jeffrey Ingber, Managing Director, General Counsel, and Secretary, FICC (June 3, 2004).

*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 600-23 and should be submitted on or before July 27, 2004.

*It is therefore ordered that FICC's temporary registration as a clearing agency (File No. 600-23) be and hereby is extended through June 30, 2005.*

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49931; File No. SR-ISE-2004-24]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the International Securities Exchange, Inc. Relating to the Interaction of Market Maker Quotations

June 28, 2004.

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 21, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in

Items I and II below, which Items have been prepared by the Exchange. This order approves the proposal on an accelerated basis and publishes notice of the proposed rule change to solicit comments from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to codify in its rules a one-second "timer" that it employs before the quotations of ISE market makers interact. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

\* \* \* \* \*

#### Rule 804. Market Maker Quotations

\* \* \* \* \*

(d) Firm Quotes. (1) Market maker bids and offers are firm for orders and Exchange market maker quotations both under this Rule and Rule 11Ac1-1 under the Exchange Act ("Rule 11Ac1-1") for the number of contracts specified according to the requirements of paragraph (b) above. Market maker bids and offers are not firm under this Rule and Rule 11Ac1-1 if:

(i) a system malfunction or other circumstance impairs the Exchange's ability to disseminate or update market quotes in a timely and accurate manner;

(ii) the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately reflects the current state of the market on the Exchange, and as a result, the market in the option is declared to be "fast" pursuant to Rule 704;

(iii) during trading rotations; or

(iv) any of the circumstances provided in paragraph (c)(3) of Rule 11Ac1-1 exist.

(2) *Notwithstanding Paragraph (1) above, if a market maker's bid (offer) can trade with the offer (bid) of another market maker, no execution shall occur between such quotations for a period of no more than one second. During this period, the System will update quotations that may be received; provided however, that during this period all quotations shall otherwise remain firm and the System will automatically execute all incoming orders against such quotations.*

(3) [(2)] Within thirty seconds of receipt of an order to buy or sell an option in an amount greater than the Order Execution Size, or within thirty seconds of another Exchange market maker entering a quotation at a price

executable against the market maker's quotation, that portion of the order equal to the Order Execution Size, or the Quotation Execution Size, as the case may be, will be executed and the bid or offer price will be revised.

\* \* \* \* \*

#### 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 Exchange 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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The ISE proposes to codify in its rules a one-second "timer" that it employs before the quotations of ISE market makers interact. The ISE treats orders and quotations differently, with ISE Rule 804(a) stating that only market makers may enter quotations on the ISE. Market makers use quotations to input and update prices on multiple series of options at the same time. Quotations generally are based on pricing models that rely on various factors, including the price and volatility of the underlying security. As these variables change, a market maker's pricing model automatically updates quotations for some or all of an option's series. In contrast, an order is an interest to buy a stated number of contracts of one specific options series. All ISE members, including ISE market makers, can enter orders.<sup>3</sup>

When stock prices change, ISE market makers update quotations in multiple series at the same time. The ISE represents that it promptly processes such quotation changes when it receives them. However, there is invariably a lag between the time the stock price first changes and the time by which the ISE can process all the corresponding option quotation changes. During this short period, the ISE may update one market maker's bid price to be the same as

<sup>12</sup> 17 CFR 200.30-3(a)(1506).

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

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

<sup>3</sup> ISE Rule 717 imposes various limitations on orders that Electronic Access Members may enter on the ISE, while ISE Rule 805 governs market maker orders.