

85), is hereby approved on an accelerated basis.⁵⁵

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵⁶

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50806; File No. SR-FICC-2004-21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee Structure of the Government Securities Division of the Fixed Income Clearing Corporation

December 7, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 9, 2004, 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 proposed rule change consists of amendments to the fee structure of the Government Securities Division ("GSD") of FICC to reflect a new pricing methodology for GSD's netting services.

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 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

The purpose of the proposed rule change is to amend the fee structure of the GSD of FICC to reflect a new pricing methodology for GSD's netting services. The new methodology was established in recognition of the evolution of the government securities marketplace and the growth of electronic trading which have resulted in the GSD processing more high-volume/low-dollar trades with fewer residual positions to settle. FICC believes that the revised fee structure more accurately aligns the costs of FICC's services with its risk exposure. The changes will go into effect on January 1, 2005.

Under the new methodology, netting fees will be calculated based on three components. These components consist of a fixed charge similar to today's fee and two new variable fees that will give FICC the ability to distinguish between smaller and larger ticket values and their associated risk, as well as capture the cost of FICC's settlement infrastructure and risk exposure associated with the post-netting positions requiring settlement.

The new netting fee calculation will be based on the following charges:

(1) A reduced fixed charge of \$0.43 per ticket for trades entering the netting process (the current charge is \$1.00);

(2) A new charge of \$0.012 per \$1 million of par value for trades entering the netting process; and

(3) A new charge of \$0.052 per \$1 million of par value for clearance obligations created as a result of the netting process.

In addition, effective January 1, 2005, the fixed clearance charge will be reduced from the current \$2.75 per obligation created to \$2.35 per obligation created in order to better align clearance revenues with associated expenses. The applicable charge for comparison services remains unchanged.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act³ and the rules and regulations thereunder applicable to FICC because the proposed change provides for fees that more accurately reflect FICC's costs and risks presented by trades submitted to FICC.

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

FICC does not believe that the proposed rule change will have an

impact 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

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)(ii) of the Act⁴ and Rule 19b-4(f)(2)⁵ thereunder because the proposed rule establishes or changes a due, fee, or other charge. 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.

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-2004-21 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-2004-21. 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

⁵⁵ 15 U.S.C. 78s(b)(2).

⁵⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

³ 15 U.S.C. 78q-1.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

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-2004-21 and should be submitted on or before January 3, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Jill M. Petersen,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50797; File No. SR-NSCC-2003-22]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Standards of Financial Responsibility Required of Mutual Fund and Insurance Services Applicants and Members That Are Banks, Trust Companies, or Broker-Dealers

December 6, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 10, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on November 29, 2004, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. 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 amend the standards of financial responsibility required of applicants and members that are banks, trust companies, or broker-dealers using or applying to use NSCC's non-guaranteed services as Mutual Fund/Insurance Services Members under Rule 2 and Fund Members under Rule 51.

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

In its filing with the Commission, NSCC 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 IV below. NSCC 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

The proposed rule change amends Addendum B, "Standards of Financial Responsibility and Operational Capability," and Addendum I, "Standards of Financial Responsibility and Operational Capability For Fund Members," of NSCC's Rules and Procedures to enhance the standards of financial responsibility required of applicants and members that are banks, trust companies, and broker-dealers using or applying to use NSCC's non-guaranteed services as Mutual Fund/Insurance Services Members under Rule 2 and Fund Members under Rule 51.³ Addendum B establishes financial criteria applicable to Mutual Fund/Insurance Services Members and applicants admitted or seeking admission under Rule 2. Addendum I establishes the financial criteria applicable to Fund Members and applicants admitted or seeking admission under Rule 51.⁴

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

³ Mutual Fund Services and Insurance Processing Services are non-guaranteed services.

⁴ NSCC has revised Addendum B (Version 1) as set forth in Appendix 1 to NSCC's Rules (Version 2 of Addendum B). Version 1 uses allocation and liquidation components to determine participant clearing fund and Version 2 uses risk-based

The proposed rule change (i) raises the minimum excess net capital requirement applicable to such broker-dealer applicants and members from \$25,000 in excess net capital to \$50,000 in excess net capital and (ii) changes the standards of financial responsibility required of banks and trust companies by reference to different types of criteria than currently used for this purpose. The effective date for the proposed rule change as applied to current members will be one year from the date of Commission approval. The one year period, arrived at after consultations with the affected members, is necessary to allow members that do not meet the increased or changed capital requirements sufficient time to evaluate their options and implement any necessary changes without undue disruption to their customers. The proposed rule change also seeks to amend Addendum I to require an established business history of six months instead of three years which is consistent with the required established business history for applicants for other types of membership in NSCC.

1. Increase of Minimum Excess Net Capital Required of Broker-Dealers Using Mutual Fund and Insurance Services

NSCC's current minimum excess net capital requirement applicable to broker-dealer applicants and members using non-guaranteed services was implemented in 1993.⁵ In 1998, NSCC increased its minimum excess net capital requirements under Rule 2 for broker-dealer applicants and members using NSCC guaranteed services from \$50,000 to \$500,000 subject to certain limited exceptions.⁶ At that time, no change was made to the financial requirements applicable to the use of non-guaranteed services. NSCC now believes it is appropriate to do so because of increased transaction volumes and settlement obligations.

NSCC currently has 290 broker-dealer members to which the increased excess

margin to determine participant clearing fund. NSCC is informing members on a rolling basis when Version 2 is applicable to them. The provisions of Addendum B, which are the subject of this proposed rule change, are identical in Version 1 and Version 2. This proposed rule change would amend both the text of Addendum B (Version 1) and Appendix 1 (Version 2 of Addendum B). Securities Exchange Act Release No. 44431 (June 14, 2001), 66 FR 33280.

⁵ Securities Exchange Act Release No. 33525 (January 26, 1994), 59 FR 9805.

⁶ Securities Exchange Act Release No. 40081 (June 10, 1998), 63 FR 32905. A municipal securities broker under Rule 15c3-1(a)(8) of the Act is required to maintain \$100,000 in excess net capital, and a clearing broker is required to maintain \$1,000,000 in excess net capital.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).