

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(1) thereunder¹⁰ because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule interpretation, the Commission may summarily abrogate such rule interpretation 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule interpretation that are filed with the Commission, and all written communications relating to the proposed rule interpretation 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-2003-30 and should be submitted by November 20, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48689; File No. SR-FICC-2003-03]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Criteria Used To Place Members on Surveillance Status

October 24, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 20, 2003, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on June 3 and 18, 2003, amended 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

FICC is seeking to amend the criteria it uses to place members on surveillance status.

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

Under the current rules of both the Government Securities Division ("GSD") and the Mortgage-Backed Securities Division ("MBSD") of FICC, management has the ability to place a member in a surveillance status class depending on whether the member satisfies one or more of the enumerated financial and operational criteria in the specific class. Once placed on surveillance status, FICC closely

monitors the member's condition. The current criteria for placing members on surveillance status are broadly written and capture many FICC members that pose minimal financial or operational risk to FICC. This creates administrative burdens for FICC staff who must more closely monitor these members that pose minimal risk.

To remedy this problem, FICC has developed new criteria for placing members on surveillance. Specifically, all domestic broker-dealers and banks³ that are GSD netting members and/or MBSD clearing members will be assigned a rating that is generated by entering financial data of the member into a matrix ("Matrix") developed by credit risk staff.⁴ Those members with a "weak" rating or deemed to pose a relatively higher degree of risk to FICC will be placed on an internal "watch list" and monitored more closely by credit risk staff.⁵ The consequences of being put on the "watch list" will be the same as is currently the case with surveillance status in the GSD's rules and include possibly requiring the member on "watch list" status to submit additional financial reports and data and/or make additional clearing or participants fund deposits.⁶

All other categories of netting and clearing members, including non-US netting members and comparison-only members, will not be included in the Matrix process because these members possess characteristics that prohibit the Matrix from effectively evaluating their risk to FICC. However, these members will be monitored by credit risk staff using financial criteria deemed relevant

³ The following categories of GSD members will receive ratings: Category 1 and 2 Dealer Netting Members, Category 1 and 2 Inter-Dealer Broker Netting Members, and Bank Netting Members. In the MBSD, Comparison and Clearing System Participants that are either banks or broker-dealers will be rated. Domestic broker-dealers and domestic banks are the only member types to which the Matrix will be applicable because (i) they represent the majority of the members of FICC and (ii) their financial reports contain information that lends them to the Matrix approach.

⁴ FICC's approach to the analysis of members will be based on a thorough quantitative analysis. A broker-dealer member's rating on the Matrix will be based on factors including size (*i.e.*, total excess net capital), capital, leverage, liquidity, and profitability. Banks will be reviewed based on size, capital, asset quality, earnings, and liquidity.

⁵ Members will also be evaluated based on their compliance with certain "parameter breaks" which will be determined based on applicable monthly and/or quarterly exception reports generated by credit risk staff. A member may be placed on the "watch list" for failure to fall within, for example, prescribed excess net capital, excess liquid capital, aggregate indebtedness, leverage ratio, or financial membership requirement parameters.

⁶ The MBSD's rules do not currently provide for surveillance status, but the MBSD has the right under certain circumstances to require additional financial reports and increased participants fund.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(1).

¹¹ 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.

by FICC.⁷ Based on this monitoring, such Members may also be placed on the "watch list" if they experience a financial change that presents risk to FICC. Some examples include failure to meet minimum financial requirements or experiencing a significant decrease in equity (for GSD members) or net asset value (for MBSD members). Members placed on the "watch list" in this way will also be monitored more closely by credit risk staff.

The GSD will continue, in accordance with its current procedures, to place GSD netting members on the "watch list" for failure to comply with operational standards and requirements.⁸ MBSD expects to implement a similar provision, as outlined in these rule changes, by the fourth quarter of 2003.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁹ and the rules and regulations thereunder applicable to FICC because it will facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible and in general will protect investors and the public interest by improving FICC's member surveillance process.

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

FICC does not believe that the proposed rule change will have any 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 not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

⁷ Credit risk staff will monitor these members by reviewing similar criteria as those reviewed for members included on the Matrix. FICC will file a proposed rule change should it decide to use a more applicable Matrix process to evaluate these members.

⁸ The GSD currently monitors the comparison rates of members. Currently, low comparison rates can result in a member being placed on Class 1 surveillance status. Under the proposed rule change, low comparison rates may result in a GSD member being placed on the "watch list." Both the GSD and the MBSD may monitor for other operational factors in the future such as failing to timely submit trade data on a frequent basis.

⁹ 15 U.S.C. 78q-1.

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Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-FICC-2003-03. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods.

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.

All submissions should refer to File No. SR-FICC-2003-03 and should be submitted by November 20, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48688; File No. SR-Phlx-2003-70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Payment for Order Flow Fees for the Top 120 Options

October 24, 2003.

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 10, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which the Phlx has prepared. 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 Phlx proposes to establish its equity options payment for order flow fees imposed on the transactions of Phlx Registered Options Traders ("ROTs") for the period from November 2003 through January 2004 for the top 120 equity options based on volume statistics from July, August and September 2003,³ as

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange's payment for order flow fee is imposed on transactions in the top 120 most actively traded equity options in terms of the total number of contracts that are traded nationally, based on volume statistics provided by the Options Clearing Corporation. The measuring period for the top 120 equity options encompasses three months and the Exchange files a separate proposed rule change for each three-month trading period. With respect to the payment for order flow fees imposed on trades settling on or after August 1, 2003 through October 31, 2003, for example, the measuring period for the top 120 equity options was based on volume statistics from April, May and June 2003. See Securities Exchange Act Release No. 48205 (July 22, 2003), 68 FR 44557 (July 29, 2003) (SR-Phlx-2003-50). For the payment for order flow fees imposed on trades settling on or after November 1, 2003 through January 31, 2004, as set forth in this proposal, the measuring period for the top 120

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