

## SECURITIES AND EXCHANGE COMMISSION

[Release 34-51911; 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 23, 2005.

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, 2006.<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 eighteen months.<sup>8</sup> The Commission subsequently extended MBSCC's registration through June 30, 2003.<sup>9</sup>

<sup>1</sup> FICC is the successor to MBS Clearing Corporation and Government Securities Clearing Corporation.

<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 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

On January 1, 2003, MBSCC was merged into GSCC and GSCC was renamed FICC.<sup>10</sup> The Commission subsequently extended FICC's temporary registration through June 30, 2005.<sup>11</sup>

On May 31, 2005, FICC requested that the Commission extend FICC's temporary registration until such time as the Commission is prepared to grant FICC permanent registration.<sup>12</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 2005, 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, 100 F Street, NE., Washington, DC 20549-9303.

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

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. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) File Nos. [SR-GSCC-2002-07 and SR-MBSCC-2002-01].

<sup>11</sup> Securities Exchange Act Release Nos. 48116 (July 1, 2003), 68 FR 41031 and 49940 (June 29, 2004), 69 FR 40695.

<sup>12</sup> Letter from Nikki Poulos, Vice President and General Counsel, FICC (May 23, 2005).

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, 100 F Street, NE., 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 21, 2005.

*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, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-3431 Filed 6-29-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51902; File No. SR-ISE-2005-19]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Its Membership Dues Fee

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 April 15, 2005, the International Securities Exchange ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items

<sup>13</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.

have been prepared by the Exchange. The proposed rule change has been filed by ISE as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission. On June 15, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The ISE proposes to amend its Schedule of Fees to (i) institute a monthly percentage fee for computer gateways provided to members instead of a flat fee, (ii) increase certain computer network fees to cover associated equipment costs, and (iii) delete references to an expired "refresh" program. The text of the proposed rule change is available on the ISE's Web site (<http://www.iseoptions.com>), at the ISE's Office of the Secretary, and at the Commission's Public Reference Room.

### 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 ISE 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. The ISE 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 purpose of this proposed rule change is to amend the Exchange's

Schedule of Fees to (i) institute a monthly percentage fee for computer gateways provided to members instead of a flat fee, (ii) increase certain computer network fees to cover associated equipment costs, and (iii) delete references to an expired "refresh" program.

• *Gateway Fees:* The Exchange provides its members with "gateway" equipment which includes switches, servers and routers that they use to connect to the ISE. The Exchange finances these gateways through a lease with a vendor. The Exchange currently charges its members a flat monthly fee for these gateways. If a member returns these gateways to ISE early, ISE remains obligated under its lease with the vendor, which results in additional cost to the Exchange. The proposed fee schedule will enable ISE to increase the number of different configurations of gateway equipment available to members. As a result, members will not be able to obtain gateway equipment that best suits their needs. Additionally, the proposed fee schedule will also allow ISE to offset any increased cost that the Exchange may incur in the event a member returns any gateway equipment early and to cover the Exchange's administrative costs. Accordingly, ISE proposes charging members a monthly fee of 4.75 percent of ISE's costs of leasing the gateway equipment from its vendor.<sup>6</sup> The Exchange believes that this proposed change will enable it to maintain control over price fluctuations, technology changes in equipment, and the costs associated with early equipment returns. The Exchange also proposes to add a level of granularity to its equipment installation, change, and removal fees. Rather than applying the fees to cabinets generally, the Exchange proposes to charge per piece of equipment. The Exchange expects the proposed fee change to have minimal impact to its members. For example, the monthly fee for member that currently leases 2 routers with 2 T-1 lines, 2 switches and 2 gateways will decrease by \$29. Whereas, the monthly fee for a member who leases the same configuration above but with 4 gateways will increase by \$86.<sup>7</sup>

<sup>6</sup> The commission notes that in Amendment No. 1, ISE added language to Exhibit 5 to clarify that the 4.75% fee is based solely on the cost of the specific equipment leased by such member.

<sup>7</sup> These are just two examples of fees charged by the Exchange. Members have many options in the gateway equipment they lease from the Exchange based on their business model. The fee charged by the Exchange is entirely dependent on the number and type of gateway equipment leased by a member.

• *Network Fees.* The Exchange proposes to increase its line connection charges for T-1 and T-3 lines to cover the cost of routers that enable members to link with the Exchange and the Exchange to link with its telecommunications provider. Until now, the Exchange had not charged members a fee to cover the cost of these routers. Accordingly, ISE proposes to change the T-1 line connection fee from \$250 to \$300, and the T-3 line connection fee from \$1,250 to \$1,500. Additionally, the Exchange proposes to extend the "megabit fee" charged to members who connect via Ethernet to members who connect via all third-party managed service providers.

• *Expired "Refresh" Program.* The Exchange is deleting references to an expired member "refresh" program. That program, which was approved by the Commission on November 12, 2004,<sup>8</sup> expired on November 30, 2004.

##### 2. Statutory basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

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

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>12</sup> because it establishes or changes a due, fee, or other charge imposed by the ISE. At any time within 60 days of the filing of the amended proposed rule change, the Commission may summarily abrogate such rule

<sup>8</sup> See Securities Exchange Act Release No. 50658 (November 12, 2004), 69 FR 67768 (November 19, 2004).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> Amendment No. 1 made minor, non-substantive clarifying changes to the purpose section and Exhibit 5. These changes to the proposed rule change did not affect the fees originally proposed. The effective date of the original proposed rule change is April 15, 2005, and the effective date of the amendment is June 15, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 15, 2005, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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.<sup>13</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 SR-ISE-2005-19 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-19. 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, 100 F Street, NE., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal offices of the ISE. 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-ISE-2005-19 and should be submitted on or before July 21, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51915; File No. SR-NASD-2003-168]

#### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto Relating to the Release of Information Through the Public Disclosure Program**

June 23, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 21, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD amended the proposed rule change on September 28, 2004, March 8, 2005, and April 12, 2005. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD is proposing to amend NASD IM-8310-2 to enhance investor protection by expanding the types of information NASD makes available through its public disclosure program; to address fairness and privacy concerns by excluding certain information currently disclosed through the program based on the status or disposition of the event; to provide, upon written request and subject to terms and conditions established by NASD, a compilation of publicly available information about NASD members; and to make conforming changes. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

#### **IM-8310-2. NASD BrokerCheck Disclosure Program [Release of Disciplinary and Other Information Through the Public Disclosure Program]**

(a) In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, [the Association] NASD shall release information [contained in the Central Registration Depository] regarding a current or former member, an associated person, or a person who was associated with a member within the preceding two years, through [the] NASD's [Public Disclosure Program] *BrokerCheck* program. [Such information shall include:]

[(1) the person's employment history and other business experience required to be reported on Form U-4;]

[(2) currently approved registrations for the member or associated person;]

[(3) the main office, legal status, and type of business engaged in by the member; and]

[(4) an event or proceeding—

(A) required to be reported under item 14 on Form U-4;

(B) required to be reported under item 11 on Form BD; or

(C) reported on Form U-6.]

[The Association also shall make available through the Public Disclosure Program certain arbitration decisions against a member involving a securities or commodities dispute with a public customer. In addition, the Association shall make available in response to telephonic inquiries via the Public Disclosure Program's toll-free telephone listing whether a particular member is subject to the provisions of Rule 3010(b)(2). The Association shall not release through the Public Disclosure Program social security numbers, residential history information, or physical description information, or information that the Association is otherwise prohibited from releasing under Federal law.]

(b) *Except as otherwise provided in paragraph (c) below, NASD shall release:*

(1) *any information reported on the most recently filed Form U4, Form U5, Form U6, Form BD, and Form BDW (collectively "Registration Forms");*

(2) *currently approved registrations;*

(3) *certain summary information about arbitration awards against a member involving a securities or commodities dispute with a public customer;*

(4) *the most recently submitted comment, if any, provided to NASD by the person who is covered by the BrokerCheck program, in the form and*

<sup>13</sup> See *supra* note 3.