SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52157; File No. SR–FICC–2005–11]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Institute a Netting Process for Fail Deliver and Fail Receive Obligations for Netting Members in Its Government Securities Division

July 28, 2005.

I. Introduction

On May 19, 2005, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2005–11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on June 24, 2005.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The rules of FICC's Government Securities Division (''GSD'') provide that FICC may, in its sole discretion, net a netting member's fail deliver and fail receive obligations with the member's current settlement obligations. FICC is amending the GSD's rules to institute this fail netting process on a daily basis.

Since the implementation of the GSD's netting system (by FICC's predecessor, the Government Securities Clearing Corporation), outstanding fails have been processed separately from new trading activity. Demand by members for the netting of fails was initially low due to the fact that many members could not properly account for netted fails in their proprietary systems. In addition, demand for netting of fails remained low until the summer of 2003 when the market experienced significant fails in the Treasury 10-year note due May 2013.

In recent years, FICC has been integrally involved in assisting the industry in addressing significant fail situations. On several occasions, FICC intervened by supporting special netting of members' fails with members' current settlement activity. While this procedure helped alleviate the number of open fails and associated settlement issues and risks, it was only an intermediate step in resolving the need for the more regular fail processing proposed herein. Moreover, the industry's continued experience with fails has caused a heightened demand on the part of members for the GSD to institute such a routine process.

Pursuant to the proposed rule change, the GSD will implement a methodology whereby outstanding member fail obligations will routinely be netted with current settlement activity. This process will provide reduced risk exposure to members because it will facilitate settlement by allowing members to close open fails on their books on a daily basis, as well as reduce the number of outstanding clearance obligations at FICC.

FICC does not anticipate an undue burden on members as a result of this proposal. The GSD has issued an Important Notice [3] to all members seeking feedback on the proposed change, and to date, the substance of any feedback received has been positive.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[4] The Commission finds that FICC's proposed rule change is consistent with this requirement because it will enable FICC to reduce the risks posed by large numbers of open fail positions.

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,[5] that the proposed rule change (File No. SR–FICC–2005–11) be and hereby is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 51865 (June 17, 2005), 70 FR 36679.

[3] Important Notice GOV028.05 (March 10, 2005).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52162, File No. SR–MSRB–2005–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Regarding Amendments to Rule G–40, on Electronic Mail Contacts, and Form G–40

July 29, 2005.

On May 26, 2005, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of amendments to Rule G–40, on electronic mail contacts, and Form G–40 that would: (i) Eliminate the need for paper submission of original forms; (ii) require each broker, dealer and municipal securities dealer (collectively ''dealers'') to maintain an Internet electronic mail account to permit communication with the MSRB; and (iii) require each dealer to review and, if necessary, update its Primary Contact information each calendar quarter. The proposed rule change was published for comment in the **Federal Register** on June 28, 2005.[3] The Commission received no comment letters regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB [4] and, in particular, the requirements of Section 15B(b)(2)(I) of the Act which authorizes the MSRB to adopt rules that provide for the operation and administration of the MSRB.[5] In particular, the Commission finds that the proposed rule change will facilitate effective electronic communication between dealers and the MSRB, and that by ensuring MSRB requirements for electronic communication are substantially similar to NASD requirements, it will facilitate dealer understanding of, and compliance with, these requirements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51892 (June 21, 2005), 70 FR 37142 (June 28, 2005).

[4] In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–4(b)(2)(I).