

Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

U.S. Office of Personnel Management.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50784; File No. SR-FICC-2004-20]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Implementation of a Fee for Financing Debits Associated With Certain Obligations of Repo Brokers

December 2, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 25, 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 implementing a fee where FICC finances debits associated with certain obligations of repo brokers.

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 Commission recently approved FICC rule filing SR-FICC-2003-06³ that amended the rules of the Government Securities Division ("GSD") of FICC with respect to forward margin obligations of repo brokers. Pursuant to FICC-2003-06, forward margin debits and credits up to a predetermined dollar amount "cap" will become automatically collected or paid (as applicable) by the repo brokers, as is the case for all other netting members. Debits and credits in excess of the cap will become subject to hybrid processing whereby the dollar amount up to the cap would always be collected or paid in its entirety by the broker and amounts over the cap would be financed by GSD at the discretion of FICC.

Specifically with respect to forward margin debits in excess of the cap, if a repo broker is unable to pay its "excess debit," the FICC Operations Department, in consultation with the Credit Risk Department will determine whether it would be appropriate for FICC to finance such an amount. If FICC finances an excess debit, the broker will be charged two fees: (1) A financing fee representing the interest amount that FICC would be charged by the clearing bank and (2) an administrative fee designed to cover FICC's associated costs of obtaining the financing.

Pursuant to the Commission's order approving FICC-2003-06, the administrative fee must be the subject of a rule filing. Due to the close interrelation between the administrative fee and the other provisions of FICC-2003-06, FICC has delayed the implementation of the approved provisions in their entirety until it established the fee. Accordingly, FICC is hereby proposing for immediate effectiveness an administrative fee of \$50 per financing to be charged to affected brokers. This administrative fee, along with the previously approved provisions of FICC-2003-06, will be implemented by year-end with the implementation date being announced to members through an important notice.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁴ and the rules and regulations thereunder applicable to FICC because it

establishes a reasonable fee to cover administrative costs.

(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 Act⁵ and Rule 19b-4(f)(2)⁶ 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-2004-20 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-2004-20. This file number should be included on the subject line if e-mail is used. To help the

¹ 15 U.S.C. 78s(b)(1).

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

³ Securities Exchange Act Release No. 50389 (September 15, 2004), 69 FR 56810.

⁴ 15 U.S.C. 78q-1.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

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, 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/legal>. 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-2004-20 and should be submitted on or before December 29, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50779; File No. SR-CBOE-2004-78]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Extend a Pilot Program Relating to the Retail Automatic Execution System

December 1, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on November 30, 2004 the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") submitted to 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 CBOE. 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 CBOE proposes to extend a pilot program relating to the operation of CBOE's Retail Automatic Execution System ("RAES") until November 30, 2005 to allow broker-dealer orders that are eligible for execution on RAES pursuant to CBOE Rule 6.8, Interpretation and Policy .01 to automatically execute against customer limit orders on CBOE's book in classes designated by the appropriate Floor Procedure Committee ("Pilot"). The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

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 IV 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 purpose of this filing is to extend the Pilot until November 30, 2005 to allow broker-dealer orders that are eligible for execution on RAES pursuant to CBOE Rule 6.8, Interpretation and Policy .01 to automatically execute against customer limit orders on CBOE's book in classes designated by the appropriate Floor Procedure Committee. The pilot was originally approved on May 13, 2004.³

The Exchange's RAES system was created to allow for the automatic execution of retail customer options orders against CBOE market makers at

their disseminated prices. In 1999, the Exchange expanded the RAES system to allow incoming RAES orders to execute against customer limit orders on the CBOE book when such booked orders constitute CBOE's best bid/offer.⁴ Recently, the Exchange has allowed broker-dealer orders to be executed on RAES in classes/series designated by the appropriate Floor Procedure Committee.⁵ The Pilot would allow these broker-dealer orders to automatically execute against the book.

2. Statutory Basis

Because the proposed rule change will expand the number of orders eligible to trade automatically with booked customer limit orders, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of

⁴ See Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999) (SR-CBOE-99-29).

⁵ See Securities Exchange Act Release Nos. 45967 (May 20, 2002), 67 FR 37888 (May 30, 2002) (SR-CBOE-2002-22); 46113 (June 25, 2002), 67 FR 44486 (July 2, 2002) (SR-CBOE-2002-35); and 46598 (October 3, 2002), 67 FR 63478 (October 11, 2002) (SR-CBOE-2002-56).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 49699 (May 13, 2004), 69 FR 28958 (May 19, 2004) (SR-CBOE-2003-42).