

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58128; File No. SR-FICC-2007-04)

July 9, 2008

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Applicant and Member Disqualification Criteria

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on April 30, 2007, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change and on February 7, 2008, and March 19, 2008, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by FICC. 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 proposed rule change would amend FICC’s Government Securities Division’s (“GSD”) and Mortgage Backed Securities Division’s (“MBSD”) (collectively, “Divisions”) rules concerning applicant and member disqualification criteria.

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 such statements.

¹ 15 U.S.C. 78s(b)(1).

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

The purpose of this filing is for FICC to amend GSD's and MBSD's rules concerning applicant and member disqualification criteria in order to make the Divisions' rules consistent with the rules of FICC's affiliated clearing agencies, the National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC"). The proposed rule changes cover the following areas:

1. Management Consideration of Disqualification Criteria²

GSD's membership qualification rules currently require FICC's Board of Directors to determine whether the presence of certain negative factors affecting a membership application should constitute the basis for denying membership to such applicant. Information that might disqualify an applicant (referred to in GSD's rules as "disqualification criteria") include the applicant being subject to a statutory disqualification³ or conviction of various crimes such as bribery. The disqualification criteria in GSD's rules similarly apply as standards for continued membership.

FICC proposes to change GSD's disqualification criteria to allow FICC's management, instead of FICC's Board, to determine whether the presence of a potential disqualifier should prevent an entity from obtaining or continuing membership in GSD. Such change would conform to the rules of MBSD, DTC, and NSCC, which allow such determinations to be made by management.

2. Associated and Affiliated Persons

² GSD Rule 2A, Section 3(d).

³ See 15 U.S.C. 78c(a)(39) (definition of "statutory disqualification").

GSD's and MBSD's respective rules also apply certain applicant and member disqualification criteria to persons "associated" (in GSD's rules) or "affiliated" (in MBSD's rules) with the applicant or member firm. FICC states that it is not always practical for it to ascertain which individuals are "associated" or "affiliated" with a particular entity and therefore proposes to amend these rules to conform them to its internal surveillance procedures and make them consistent across both Divisions. Accordingly, references to persons "associated" or "affiliated" with the member or applicant would be changed to references to "controlling management," which will include those officers of the applicant or member that are currently screened by FICC's Risk Management department pursuant to internal procedures.⁴ In addition, FICC proposes to add language to its rules that would require applicants to inform FICC as to any member of its controlling management that is or becomes subject to statutory disqualification.

3. Monitoring of Objective Disqualification Criteria

Under the proposal, GSD's disqualification criteria would be amended to reflect an approach that such criteria should be objectively and practically monitored. Specifically, FICC proposes to delete one disqualification criterion that refers to an applicant being subject to "closer than normal" surveillance by a regulatory body. FICC states that this event might not be reported in a regulatory background check.

In addition, MBSD's rules currently contain only two criteria that may be the basis for denial of a membership application, including: (i) an applicant's subjection to a statutory disqualification or similar order by another examining authority and (ii) an applicant or an

⁴ Proposed GSD Rule 1 and MBSD Article I ("The term 'controlling management' shall mean the Chief Executive Officer, the Chief Financial Officer, and the Chief Operations Officer, or their equivalents, of an applicant of Participant.").

associated person of the applicant making a misstatement of a material fact in connection with its membership application or thereafter. MBSD proposes to add GSD's remaining disqualification criteria, which would result in the Divisions' having identical disqualification criteria.

Finally, FICC proposes add a provision to both Divisions' rules that would clarify FICC's right to deny membership to an applicant or member if FICC learns of any factor or circumstance that might impact the suitability of that particular applicant or member as a participant.

4. Additional Changes

FICC proposes to make the following changes to provide additional uniformity among the Divisions' rules, NSCC, and DTC:

- Adding to both Divisions' disqualification criteria violations of the Investment Company Act and Investment Advisers Act,⁵ since those statutes apply to their current membership base.
- Amending GSD's definition of "self-regulatory organization" to include those entities that are foreign equivalents. The same definition for "self-regulatory organization" would be added to MBSD's rules.
- Removing the word "willful" from both Divisions' disqualification criteria concerning an applicant's or an applicant's controlling management's violation of the specified federal statutes or any rule or regulation promulgated thereunder. FICC believes that a violation of these provisions, whether or not willful, should be considered as a potential disqualification criterion.

⁵ 15 U.S.C. 80a-1 et seq. and 15 U.S.C. 80b-1 et seq. respectively.

- Deleting references in GSD’s rules to Section 153 of Chapters 25 and 47 of Title 18 of the United States Code (“Code”) because the crimes covered by these statutes (i.e., embezzlement, forgery, false statements, etc.) are captured by the current disqualification criteria. References to those portions of the Code that deal with mail and wire fraud (Sections 1341, 1342 and 1343) would remain. This provision, as proposed, would also be added to MBSD’s rules.

Conforming changes would be made to the cease to act provisions of GSD’s rules (Rule 21, “Restrictions on Access to Services”) in order to ensure consistency within the rules and across the Divisions.

FICC states that the proposed rule change is consistent with the requirements of Section 17A of the Act⁶ and the rules and regulations thereunder because they provide consistency and transparency with respect to the applicant and member disqualification criteria in the GSD and MBSD rules, thereby promoting the prompt and accurate clearance and settlement of securities transactions.

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

FICC believes that the proposed rule change does not 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

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any written comments it receives.

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

⁶ 15 U.S.C. 78q-1.

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. 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 No. SR-FICC-2007-04 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-FICC-2007-04. 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 Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at FICC's principal office and on FICC's Web site at <<http://ficc.com/gov/gov.docs.jsp?NS-query=#rf>>. 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 No. SR-FICC-2007-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets pursuant to delegated authority.⁷

Florence E. Harmon
Acting Secretary

⁷ 17 CFR 200.30-3(a)(12).