

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53671; File Nos. SR-FICC-2006-03 and SR-NSCC-2006-03)

April 18, 2006

Self-Regulatory Organizations; Fixed Income Clearing Corporation and National Securities Clearing Corporation; Notice of Filing of Proposed Rule Changes to Institute a Clearing Fund Premium Based Upon a Member's Clearing Fund Requirement to Excess Regulatory Capital Ratio

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 22, 2006, the Fixed Income Clearing Corporation ("FICC") and the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II, and III below, which items have been primarily prepared by FICC and NSCC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

FICC and NSCC are seeking to institute a clearing fund premium on their members based on a member's clearing fund requirement to excess regulatory capital ratio.

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

In its filing with the Commission, FICC and NSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified

¹ 15 U.S.C. 78s(b)(1).

in Item IV below. FICC and NSCC have 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 Changes

1. FICC Clearing Fund Premium

The degree to which the collateral requirement of a clearing agency member compares to the member's excess regulatory capital is an important indicator of the potential risk that the member presents to the clearing agency. In 2002, the Government Securities Clearing Corporation ("GSCC"), the predecessor to the Government Securities Division ("GSD") of FICC, received Commission approval to impose a collateral premium on netting members whose clearing fund requirement exceeds their excess regulatory capital.³ Specifically, the GSD currently imposes a 25 percent collateral premium when a member's ratio of clearing fund requirement to excess net capital, excess liquid capital, excess regulatory capital, or excess adjusted capital is greater than 1.0. The 25 percent premium is applied to the amount by which the member's clearing fund requirement exceeds the member's excess regulatory capital.

In order to more effectively manage the risk posed by a GSD member whose activity causes it to have a clearing fund requirement that is greater than its excess regulatory capital, FICC now proposes to strengthen the above-mentioned risk management tool by applying a

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

³ Securities Exchange Act Release No. 45647 (March 26, 2002), 67 FR 15438 (April 1, 2002) [File No. SR-GSCC-2001-15]. "Excess regulatory capital" for purposes of GSD's collateral premium included excess net capital, excess liquid capital, or excess adjusted capital

clearing fund premium that is equal to the member's ratio of clearing fund requirement to excess regulatory capital in place of the current flat premium of 25 percent.⁴ The premium would be determined by multiplying: (a) the amount by which a member's clearing fund requirement exceeds its capital by (b) the member's ratio of clearing fund to excess regulatory capital expressed as a percent. This formula would allow the premium to increase or decrease in proportion to changes in the ratio and should allow for risk management that is measured in proportion to the risk presented. For example, if a member has a clearing fund requirement of \$11.4 million and excess net capital of \$10 million, its ratio is 1.14 (or 114 percent), and the applicable collateral premium would be 114 percent of \$1.4 million (i.e., the amount by which the member's clearing fund requirement exceeds its excess net capital) or \$1,596,000. If the same member had a clearing fund requirement of \$20 million, its ratio would be 2.0 (or 200 percent), and the applicable collateral premium would be 200 percent of \$10 million or \$20 million.

Currently, the collateral premium applies to members whose excess regulatory capital is measured as excess net capital, excess liquid capital, or excess adjusted net capital. The proposed rule change seeks to also include excess equity capital as regulatory excess capital so that the premium can be applied to bank and trust company netting members whose capital is measured as equity capital.

⁴ If FICC imposes this premium on a Netting Member, then it shall be considered included as part of the netting member's "required fund deposit" as defined in the GSD's rules.

The proposed rule change also seeks an additional change to Rule 4 (Clearing Fund, Watch List and Loss Allocation), Section 3 (Watch List) to remove a provision which states that FICC may require a netting member to adjust its trading activity so that its excess regulatory capital ratio decreases to a satisfactory level. This provision was appropriate under the fixed 25 percent premium but no longer would be appropriate because the proposed rule change would impose a variable premium based on activity which would require members to adjust their trading activity or be subject to the higher premium.

2. NSCC Clearing Fund Premium

NSCC is proposing to impose a clearing fund premium on Rule 2 (Members) broker/dealer and bank members whose clearing fund requirement exceeds their regulatory excess capital. NSCC's proposed excess regulatory capital premium would apply to members whose regulatory excess capital is measured as excess net capital or excess equity capital. The excess regulatory capital premium would be triggered when a member's ratio of clearing fund requirement to excess regulatory capital is greater than 1.0 and would be determined using the same formula as that proposed by FICC. The new premium would be added to NSCC's clearing fund formula in Procedure XV (Clearing Fund Formula and Other Matters).⁵

As a matter of practice, when a FICC or NSCC member's clearing fund requirement to excess regulatory capital ratio is between .50 and 1.0, a warning notification will be issued which will put the member on notice that a collateral premium will be required if the ratio reaches an

⁵ This premium would not apply to the Canadian Depository for Securities Limited ("CDS") clearing fund requirement that is computed pursuant to Appendix 1 of NSCC's rules.

amount greater than 1.0. When a member's ratio exceeds 1.0, it will be notified on that business day that a collateral premium has been calculated and will be collected.

FICC and NSCC will reserve the right to: (i) apply a lesser collateral premium (including no premium) based on specific circumstances (such as a member being subject to an unexpected haircut or capital charge that does not fundamentally change its risk profile) and (ii) return all or a portion of the premium amount if it believes that the member's risk profile does not require the maintenance of that amount.

FICC and NSCC believe that the proposed rule changes are consistent with the requirements of Section 17A of the Act⁶ and the rules and regulations thereunder applicable to FICC and NSCC because they should help FICC and NSCC assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible by allowing FICC and NSCC to more effectively manage risk presented by certain members.

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

FICC and NSCC do not believe that the proposed rule changes would impose any burden on competition.

⁶ 15 U.S.C. 78q-1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule changes, and none have been received.

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

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 changes or

(B) institute proceedings to determine whether the proposed rule changes 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 changes are 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 Numbers SR-FICC-2006-03 and SR-NSCC-2006-03 on the subject line.

Paper comments:

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

All submissions should refer to File Numbers SR-FICC-2006-03 and SR-NSCC-2006-03. These file numbers 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings also will be available for inspection and copying at the principal offices of FICC and NSCC and on FICC's Web site at <http://www.ficc.com/gov/gov.docs.jsp?NS-query> and on NSCC's Web site at <http://www.nsc.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 Numbers SR-FICC-2006-03 and SR-NSCC-2006-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Nancy M. Morris
Secretary

⁷ 17 CFR 200.30-3(a)(12).

