

and lending and extending credit to other nonutility money pool participants.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52124; File No. SR-FICC-2005-09]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Collecting of Fees for Services Provided by Other Entities

July 26, 2005.

I. Introduction

On May 3, 2005, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2005-09 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 13, 2005.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change amends FICC's rules to allow FICC to collect fees for services provided by unregulated subsidiaries of The Depository Trust and Clearing Corporation ("DTCC" and by other entities. FICC is a subsidiary of DTCC. Members of FICC and their affiliates may from time to time utilize the services of DTCC subsidiaries that are not registered as clearing agencies with the Commission. Such subsidiaries include Global Asset Solutions LLC and DTCC Deriv/Serv LLC. In addition, members of FICC and their affiliates may utilize the services of other third parties. FICC has determined that it would be more efficient and less costly if the fees that members agree to pay for such services were collected by FICC rather than through independent billing mechanisms that would otherwise have to be established by each subsidiary of

DTCC and third party that is not a registered clearing agency.

FICC's rules currently allow for fee collection arrangements with respect to collection of fees from members. The proposed rule change further clarifies this practice and facilitates collection of fees with respect to affiliates of members.³ FICC will enter into appropriate agreements with such subsidiaries and others regarding the collection of fees.

III. Discussion

Section 17A(a)(1)(B) of the Act provides that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.⁴ Although the services provided by unregulated DTCC subsidiaries and by other third parties are not core clearance and settlement services, they are related to the clearance and settlement operations of FICC and of its members. By streamlining the fee collection process for these services so that FICC's members will pay these fees to FICC as a part of their normal monthly FICC bills, the proposed rule change should help to improve efficiency in the operations of FICC members and thereby should remove unnecessary cost for FICC members and for the persons (*i.e.*, the DTCC subsidiaries and the other entities providing services to FICC members) facilitating transactions by and acting on behalf of investors. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of section 17A of the Act.

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, that the proposed rule change (File No. SR-FICC-2005-09) be and hereby is approved.

³ FICC currently has such fee collection arrangements with The Bond Market Association ("TBMA") pursuant to specific rules provisions. FICC continues to collect fees on behalf of TBMA; however, pursuant to this filing, the existing rules provisions which govern the TBMA arrangement will be replaced with broader language intended to cover all such fee collection arrangements entered into by FICC.

⁴ 15 U.S.C. 78q-1(a)(A)(B).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52133; File No. SR-NASD-2005-068]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Regarding a New Order Type for the Pre-Market Trading Session

July 27, 2005.

On May 25, 2005, the National Association of Securities Dealers, Inc., through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to establish a new order type for Nasdaq-listed securities called the Total Good-till-Canceled order, which would be eligible for execution during the pre-market trading session and would be processed precisely as the Good-till-Canceled order. The proposed rule change was published for comment in the **Federal Register** on June 23, 2005.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,⁴ the requirements of Section 15A of the Act,⁵ in general, and Section 15A(b)(6) of the Act,⁶ in particular, which requires, among other things, that the rules of a national securities association be designed to facilitate transactions in securities and to remove impediments to and perfect the mechanism of a free and open

⁵ 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. 51859 (June 16, 2005), 70 FR 36428.

⁴ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(6).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 51789, (June 6, 2005), 70 FR 34169.

market. In proposing to establish the new order type, Nasdaq seeks to provide market participants with more choices, thereby permitting them to represent their trading interest more completely than is currently possible on Nasdaq. The depth and liquidity of the market on Nasdaq could increase as a result of the enhanced interest and competition, which in turn could promote greater competition among market centers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-NASD-2005-068) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52125; File No. SR-OCC-2005-09]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to OCC's Data Distribution Service

July 26, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 24, 2005, The Options Clearing Corporation ("OCC") 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 primarily by OCC. 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 purpose of the proposed rule change is to adopt a new DDS Supplement to support the conversion of OCC's data distribution service ("DDS")² to the technology used by OCC's new clearing system, ENCORE.

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

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.³

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

An OCC clearing member may subscribe to DDS in order to receive in a machine readable format a copy of data processed by OCC that is proprietary to that clearing member (e.g., position and post-trade entries) and that is "non-proprietary" (i.e., data not specific to the clearing member) produced by OCC, including series, prices, and other information. A subscribing clearing member may instruct OCC to provide data to its managing clearing member or to its service bureau. Parties that are not clearing members may also subscribe to DDS in order to receive certain non-proprietary data. Data provided as a part of ENCORE DDS is organized into different "message types" that a subscriber may elect to receive.

ENCORE DDS has been developed to provide a secure, flexible framework for distributing messages to subscribers pursuant to their elections.⁴ As is the case today, ENCORE DDS subscribers will be permitted to choose whether to access messages from OCC servers or to directly receive message transmissions from OCC. Subscribers may elect to receive messages on a real time basis (a new DDS offering) and/or on a batch basis (a current DDS offering) although not all message types will be made available under both methods.⁵ For subscribers electing to receive DDS on a real time basis, an "end of day" message will alert them not to expect any further information from OCC for that day. ENCORE DDS will be available to subscribers through leased lines, the internet, or both. OCC will support the

current DDS format and the ENCORE DDS format during a transition period.

The DDS Supplement is structured to fit within OCC's existing framework for the Agreement for OCC Services and will replace the current form supplement between clearing members and OCC.⁶ The DDS Supplement's provisions are generally self-explanatory, and they are intended to describe the respective responsibilities of OCC and the subscribing clearing member. Section 1 describes DDS and, if applicable, permits a clearing member to direct OCC to deliver messages to the clearing member's managing clearing member or service bureau, as applicable. Section 2 sets forth criteria associated with subscribing to DDS. Sections 3 through 5 set forth further responsibilities of the parties including limitations on warranties, liability,⁷ and indemnification. Section 6 contains general terms regarding survival of certain provisions. Annex I provides an overview of message types offered as a part of ENCORE DDS. Annex II is a form which permits a clearing member to provide contact information regarding its managing clearing member and a certification of the managing clearing member with respect to DDS. Annex III is a comparable form for service bureaus.

OCC believes that the proposed change is consistent with Section 17A of the Act because ENCORE DDS provides a more efficient and effective means to furnish machine readable clearing-related data to clearing members. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

OCC does not believe that the proposed rule change would impose any burden on competition.

⁶ The DDS Supplement to be entered into between OCC and clearing members subscribing to DDS is attached to the filing of proposed rule change as Exhibit 5.

⁷ The limitation of liability provision contained in the DDS Supplement is based on the comparable provisions of the Supplement for Internet Access, which was approved by the Commission in Securities Exchange Act Release No. 46152 (July 1, 2002) 67 FR 45166 (July 8, 2002) [File No. SR-OCC-2001-09]. OCC has filed a proposed rule change with the Commission to establish a standard of care by which any potential liability of OCC to its clearing members would be judged [File No. SR-OCC-2003-13]. If approved, that proposed rule change would amend supplements to the Agreement for OCC Services to the extent a standard of care is established therein to reference the standard as it would be set forth in OCC's By-laws.

¹ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² OCC offers certain ancillary services to clearing members that are not set forth in OCC's By-laws and Rules. Examples of such services include different channels by which clearing members may elect to receive data processed by OCC or to communicate instructions to OCC.

³ The Commission has modified parts of these statements.

⁴ Fees charged for DDS to clearing members and non-clearing members (as set forth in OCC's Schedule of Fees) will not be changed at this time.

⁵ For example, price messages currently are expected to be only offered on a batch basis.