

Makers, Remote Market-Makers, Designated Primary Market-Makers, Electronic Designated Primary Market-Makers and Lead Market-Makers (collectively referred to as "Market-Makers")⁵ with respect to opening rotations in CBOE Hybrid Trading System ("Hybrid") classes. Specifically, the 10-up requirement would continue to apply, except that a Market-Maker would be permitted to enter an opening quote for as low as one contract if the underlying primary market⁶ disseminates less than a 1000-share best bid or offer quote (which is the equivalent of ten contracts) immediately prior to an option series opening. In contrast to the intra-day quoting requirements under CBOE Rule 8.7, this exception would not require that the opening quote process be automated or that the Market-Maker's quote size automatically return to at least 10-up when the underlying primary market no longer disseminates a minimum 1000-share quote.

The Commission notes that, while the Exchange believes that the existing opening quote size requirement imposes a reasonable obligation on Market-Makers who receive certain benefits for satisfying this and other obligations, the Exchange also believes that there are instances where requiring Market-Makers to quote 10-up during an opening rotation imposes a heightened level of risk on them.⁷ Accordingly, CBOE's proposal would provide limited relief from this quoting requirement during the opening rotation only.

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act⁸ and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ which requires that a national securities exchange's rules be

⁵ Currently, Designated Primary Market-Makers, Electronic Designated Primary Market-Makers and Lead Market-Makers are required to enter opening quotes in accordance with CBOE Rule 6.2B in 100% of the series of each appointed class; other Market-Makers and Remote Market-Makers are permitted, but not required, to enter opening quotes in accordance with CBOE Rule 6.2B. See CBOE Rules 6.2B, 8.15A (subparagraph (b)(iv) of this rule has been interpreted by the Exchange to require an LMM to enter opening quotes in 100% of the series of each appointed class), 8.85, and 8.93.

⁶ CBOE Rule 1.1(v) defines the term "primary market" of an underlying security as "the principal market in which the underlying security is traded."

⁷ See Notice, *supra* note 3, at 60698.

⁸ 15 U.S.C. 78(f)(b).

⁹ In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(5).

designed to facilitate transactions in securities, to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Commission notes that Market-Makers hedge their options transactions by buying and/or selling the underlying securities. When the underlying primary market for the particular equity security on which a CBOE option is based disseminates less than a 1000-share quote during CBOE's opening rotation in the respective option series, the amount of readily-accessible liquidity available to a CBOE Market-Maker in the underlying security on that particular side of the market to hedge a 10-up quote in the respective option may potentially be limited. Correspondingly, Market-Makers' ability to hedge their positions at the open might be restricted, increasing their financial exposure and risk, particularly when the Market-Maker is required to quote over multiple series during the typically active open rotation period.¹¹

While the Commission continues to believe that CBOE's existing quote size requirements are appropriate, given the benefits that are provided to Market-Makers such as favorable margin treatment, the Commission also believes that it is reasonable to allow a limited exception for Market-Makers to lower their quote sizes to as low as one contract during opening rotations on HOSS when there is a diminished amount of liquidity in the underlying primary market. By permitting Market-Makers to limit their exposure at the opening, the Commission believes that this proposal may encourage Market-Makers to quote more competitively during HOSS opening rotations.¹² The Commission notes that CBOE's proposal would permit Market-Makers to submit an opening quote for as low as one contract only in connection with opening rotations on HOSS, though a Market-Maker would be free to quote more if it so choose. Further, the proposal would permit a Market-Maker to maintain its 1-up quote during the opening rotation until it is decremented or the Market-Maker updates its quote, at which point CBOE's continuous quoting obligation rules would apply. Finally, the Commission believes that the proposal should not detract from

¹¹ According to the Exchange, an options exchange may list 20 or more options series for an underlying stock. For example, if a Market-Maker posts 10-up markets in twenty series, that Market-Maker would provide liquidity equivalent to 20,000 shares.

¹² Nothing in this proposal would affect a Market-Maker's obligation to honor its firm quote obligations imposed by CBOE Rule 8.51.

CBOE's ability to maintain fair and orderly openings on HOSS because, to the extent that there may be a market order imbalance on the opening, such imbalances would continue to be addressed in the same manner as they are currently handled under existing CBOE rules.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CBOE-2007-59) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56863; File No. SR-DTC-2007-06]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Amend the Hearing Procedures Afforded to an Interested Person and Harmonize Them With Similar Rules of Its Affiliates

November 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 30, 2007, The Depository Trust Company ("DTC") 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 DTC. 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 seeks (1) to modify DTC's rules regarding hearing procedures afforded to Interested Persons³ and (2) where practicable or beneficial, to harmonize them with similar rules of DTC's affiliates, the National Securities Clearing Corporation

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ "A Participant or Pledgee, [or] applicant to become a Participant or Pledgee or issuer of a Security." Rule 22, Section 1.

("NSCC") and the Fixed Income Clearing Corporation ("FICC").

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.⁴

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

1. Minor Rule Violation Plan

In 1984, the Commission adopted amendments to Rule 19d-1(c) under the Act⁵ that allow self-regulatory organizations to adopt with Commission approval plans for the disposition of minor violations of rules.⁶

Currently under DTC's rules, an Interested Person subject to disciplinary action has a right to a hearing before a member or members of a panel selected by the Chairman of the Board from a pool of persons employed by or partners of participants. Because some rule violations are not sufficiently serious to merit Board review, DTC is proposing to adopt a Minor Rule Violation Plan within the meaning of Rule 19d-1(c)(2) of the Act for those rule violations DTC deems minor. Consistent with Rule 19d-1(c)(2) of the Act, DTC would designate those rule violations for which a fine may be assessed in an amount not to exceed \$5,000 as minor rule violations. If a member were to dispute a fine imposed by DTC by filing a written request for hearing and a written statement, DTC management would have the authority to waive the fine. DTC management would notify the Board of Directors (or a Committee authorized by the Board of Directors) of its determination to waive the fine and would provide the reasons for the waiver. The Board or Committee could in its discretion decide to reinstate any fine waived by DTC management. If DTC management were not to waive the fine, the member could appeal the

decision to a panel comprised of DTC officers ("Minor Rule Violation Panel").

2. Hearings for All Other Violations and Minor Rule Violation Appeals

For matters involving (i) an alleged violation of a DTC rule or procedure for which a fine in an amount of over \$5,000 is assessed, (ii) applicants for participation, or (iii) other disciplinary actions to which the Minor Rule Violation Plan would not apply or for appeals from a Minor Rule Violation Panel decision adverse to an Interested Person, the Interested Person would be entitled to a hearing before a panel comprised of three individuals selected by the Chairman of the Board from a pool of persons employed by or partners of participants. Persons shall be appointed members of the pool by the Board. Decisions of the panel would be final; however, the full Board of Directors would retain the right to modify any sanction or reverse any decision of the Board panel that is adverse to the Interested Person.

Currently with respect to hearings, an Interested Person is afforded the opportunity to be heard and may be represented by counsel if desired. A record is kept of the hearing, and at the discretion of the Board panel, the associated cost may be charged in whole or part to the Interested Person in the event that the decision is adverse to the Interested Person. The Interested Person is advised of the Board panel's decision within ten business days after the conclusion of the hearing. These procedures would also apply with respect to the Minor Rule Violation Plan.

3. Administrative Changes: Uniformity of Time Frames

The proposed rule changes seek to implement uniform time periods among DTC, NSCC, and FICC governing actions an Interested Person would be required to take in order to request a hearing. The deadlines an Interested Person must adhere to in order to request a hearing currently vary between DTC, NSCC, and FICC. Under the proposed rule change, an Interested Person would have five business days from the date on which DTC first informed it of a sanction or a denial of membership by which to request a hearing.

Within seven business days, or three days in the case of a summary action taken against the Interested Person, after filing a request for a hearing with DTC, the Interested Person would be required to submit to DTC a clear and concise written statement setting forth the action or proposed action of DTC with respect to which the hearing is

requested, the basis for objection to such action, whether the Interested Person intends to attend the hearing, and whether the Interested Person chooses to be represented by counsel at the hearing. The proposed time frames would be consistent with time frames being proposed by FICC and NSCC.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁷ and the rules and regulations thereunder because the adoption of a Minor Rule Violation Plan furthers the statutory objective of providing a fair procedure for disciplining Participants and will provide DTC with the ability to impose a meaningful sanction for those rule violations that do not necessarily rise to a level of meriting a full disciplinary proceeding. Accordingly, the proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions.

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

DTC does not believe that the proposed rule change will have any 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 not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change 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 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.

⁴ The Commission has modified the text of the summaries prepared by DTC.

⁵ 17 CFR 240.19d-1(c).

⁶ Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) [File No. S7-983A].

⁷ 15 U.S.C. 78q-1.

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 rules-comments@sec.gov. Please include File Number SR-DTC-2007-06 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 Number SR-DTC-2007-06. 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 Section, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-06.pdf. 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-DTC-2007-06 and should be submitted on or before December 21, 2007.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,
Deputy Secretary.

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⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56864; File No. SR-FICC-2007-06]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the Hearing Procedures Afforded to Members and Applicants for Membership and Harmonize Them With Similar Rules of Its Affiliates

November 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 30, 2007, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on July 24, 2007, amended³ 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 seeks (1) to modify the rules of FICC's Government Securities Division ("GSD") and Mortgage-Backed Securities Division ("MBSD") (GSD and MBSD are collectively referred to as the "Divisions"), including the EPN rules of MBSD, regarding hearing procedures afforded to members and applicants for membership and (2) where practicable or beneficial, to harmonize them with similar rules of FICC's affiliates, The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC").

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),

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The amendment corrected a typographical error in the proposed rule text.

and (C) below, of the most significant aspects of these statements.⁴

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

1. Minor Rule Violation Plan

In 1984, the Commission adopted amendments to Rule 19d-1(c) under the Act⁵ that allow self-regulatory organizations to adopt with Commission approval plans for the disposition of minor violations of rules.⁶

Currently under each Division's rules, a member or applicant subject to disciplinary action has a right to a hearing before a panel comprised of members of FICC's Board of Directors regardless of the severity of the action for which the member or applicant is being disciplined.⁷ Because some rule violations are not sufficiently serious to merit Board review, FICC is proposing to adopt a Minor Rule Violation Plan within the meaning of Rule 19d-1(c)(2) of the Act for those rule violations FICC deems minor. Consistent with Rule 19d-1(c)(2) of the Act, FICC would designate those rule violations for which a fine may be assessed in an amount not to exceed \$5,000 as minor rule violations. If a member were to dispute a fine imposed by FICC by filing a written request for hearing and a written statement, FICC management would have the authority to waive the fine. FICC management would notify the Board of Directors (or a Committee authorized by the Board of Directors) of its determination to waive the fine and would provide the reasons for the waiver. The Board or Committee could in its discretion decide to reinstate any fine waived by FICC management. If FICC management were not to waive the fine, the member could appeal the decision to a panel comprised of FICC officers ("Minor Rule Violation Panel").

2. Hearings for All Other Violations and Minor Rule Violation Appeals

For matters involving (i) an alleged violation of a GSD or MBSD rule for which a fine in an amount of over \$5,000 is assessed, (ii) applicants for membership, or (iii) other disciplinary actions to which the Minor Rule Violation Plan would not apply or for appeals from a Minor Rule Violation

⁴ The Commission has modified the text of the summaries prepared by FICC.

⁵ 17 CFR 240.19d-1(c).

⁶ Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) File No. S7-983A).

⁷ MBSD Article V, Rule 7 ("Appeals"); EPN Article X, Rule 7 ("Appeals"); and GSD Rule 37 ("Hearing Procedures").