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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55134; File No. SR-FICC-2006-14]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of Proposed Rule Change Relating To Returning Excess Clearing Fund Collateral

January 19, 2007.

#### I. Introduction

On September 22, 2006, the Fixed Income Clearing Corporation (“FICC”) submitted to the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder, <sup>2</sup> a proposed rule change to amend FICC’s Government Securities Division’s (“GSD”) rules to permit GSD members to request the return of their excess clearing fund collateral held on deposit with FICC on a more frequent basis than is currently allowed under GSD’s rules. The proposed rule change was published for comment in the **Federal Register** on November 27, 2006. <sup>3</sup> No comment letters were received on the proposal. This order approves the proposal.

#### II. Description of the Proposal

Prior to this rule change, GSD members were permitted to request the return of excess clearing fund collateral once per month. <sup>4</sup> In addition, on any business day, if a GSD member had exceeded its required clearing fund

obligation by \$5 million or more, the member could request the return of the excess deposit provided that, among other requirements, the return would not result in the member having a clearing fund deposit amount of less than the greater of (1) 110 percent of the member’s clearing fund requirement or (2) \$1 million more than its required clearing fund deposit.

In an effort to harmonize GSD’s process with respect to the return of excess collateral with the processes of other Depository Trust & Clearing Corporation (“DTCC”) subsidiary clearing agencies, FICC is changing GSD’s rules to give GSD the discretion to return excess clearing fund more frequently and without regard to the limitations noted above. <sup>5</sup> Although the rule change will enable GSD members to request the return of excess clearing fund on a daily basis, GSD will retain the right to deny the return of some or all of a member’s excess collateral if: (i) The member has an outstanding payment obligation to FICC; (ii) the member’s funds-only settlement amounts or net settlement positions over the upcoming 90 days may reasonably be expected to be materially different than those of the preceding 90 days; (iii) the member is on the watch list; or (iv) the return of excess clearing fund will cause the member to be in violation of another GSD rule. In addition, excess clearing fund would not be returned to a member if doing so would reduce a member’s cross-guaranty repayment deposit or cross-margining repayment deposit to the clearing fund below the required amount. <sup>6</sup>

#### III. Discussion

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 registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F), <sup>7</sup> which, among other things, requires the rules of a clearing

agency to assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible. Although the rule change will enable FICC members to request and receive an earlier return of excess clearing fund collateral, FICC will retain explicit rights to deny such return requests when doing so would subject FICC to undue risks. Accordingly, the proposed rule change will assure FICC’s ability to safeguard securities and funds in its possession or control or for which it is responsible.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act <sup>8</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, <sup>9</sup> that the proposed rule change (File No. SR-FICC-2006-14) be, and hereby is, approved. <sup>10</sup>

For the Commission by the Division of Market Regulation, pursuant to delegated authority. <sup>11</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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<sup>5</sup> The rules of the National Securities Clearing Corporation (“NSCC”) and FICC’s Mortgage Backed Securities Division (“MBSD”) permit their respective members to request under normal circumstances the return of their excess clearing fund.

<sup>6</sup> Under GSD’s rules, a “cross-guaranty repayment deposit” is a deposit to the clearing fund required to be made by a cross-guaranty beneficiary member pursuant to Rule 41, Section 4 of GSD’s Rules. A “cross-margining repayment deposit” is a deposit to the clearing fund required to be made by a cross-margining beneficiary participant pursuant to Rule 43, Section 6 of GSD’s Rules.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> In approving the proposed rule change, the Commission considered the proposal’s impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 54787 (Nov. 20, 2006), 71 FR 68664.

<sup>4</sup> Excess clearing fund is the amount of collateral held on deposit at GSD that is greater than a member’s required clearing fund deposit as set forth in GSD Rule 4 (Clearing Fund, Watch List and Loss Allocation).