

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. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-CHX-2005-01 and should be submitted on or before November 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52655; File No. SR-FICC-2005-15]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Charges for Communications Fees To Continue Operating Legacy Communication Networks

October 24, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 9, 2005, the Fixed Income Clearing Corporation ("FICC") 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 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 would revise the fees charged to members that fail to migrate their communications systems from legacy networks to The Depository Trust & Clearing Corporation's ("DTCC's") Securely Managed and Reliable Technology ("SMART") system<sup>2</sup> or to the Securities Industry Automation Corporation's ("SIAC's") Secure Financial Transaction Infrastructure ("SFTI") networks.

#### 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 these statements.<sup>3</sup>

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

Beginning in 2003, FICC has periodically informed members of the need to migrate their telecommunications connectivity from SIAC's legacy based Broker and Access networks to DTCC's SMART system or SIAC's SFTI.<sup>4</sup> While several advantages exist in having all members successfully migrate, FICC's main objective in insourcing these services into its own data processing operations is to provide consistent business continuity planning capabilities across all FICC services. In the event of a large-scale regional disruption, any member accessing FICC through a legacy network will not have the benefits provided by the other communications vehicles which could create exposure to these members and their counterparties.<sup>5</sup>

<sup>2</sup> SMART is DTCC's centralized, end-to-end managed communications infrastructure that provides connectivity support for all post-trade clearance and settlement processing. Most of the services offered by DTCC's subsidiaries, The Depository Trust Company, the National Securities Clearing Corporation, and FICC are accessible through SMART. SMART is interoperable with SFTI.

<sup>3</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>4</sup> DTCC Important Notices Z#0008, Z#0009, and Z#0010.

<sup>5</sup> SMART is designed to withstand catastrophic disaster scenarios and is set up to operate in DTCC's

While most FICC members have complied with stated migration requirements, several members continue to access FICC through legacy networks, which is imposing significant unnecessary costs on FICC for continued support of these systems. In order to encourage these members to migrate and in order to equitably allocate costs among its members, FICC intends to allocate its costs for continued support of legacy networks among the members using such systems on a pro rata basis. FICC plans to soon issue an important notice to members specifying the date such fees will become effective.<sup>6</sup>

In order to avoid bearing these costs, members currently using legacy systems are required to take the following actions: (i) As soon as possible, ensure adequate communications connectivity through SMART and/or SFTI, (ii) successfully complete testing through the newly-established pathways, (iii) complete full conversion of all input/output for applicable FICC applications directly to/from FICC through SMART and/or SFTI, and (iv) cancel the legacy network connections.

The proposed change is consistent with Section 17A of the Act<sup>7</sup> and the rules and regulations thereunder applicable to FICC because it will enable FICC to equitably allocate costs among its members.

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

FICC 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 yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

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

The foregoing rule change has become effective upon filing pursuant to Section

multiple remote sites to ensure its operability in the event of disruption. Legacy network connections are not automatically configured to "fail over" to DTCC's remote processing sites and therefore do not provide members using these networks with the resilience that would be needed in the event of a large-scale regional disruption.

<sup>6</sup> FICC expects that the migration deadline will be set for the end of 2005.

<sup>7</sup> 15 U.S.C. 78q-1.

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

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

19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder because the proposed rule establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2005-15 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-FICC-2005-15. 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. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at <http://www.ficc.com>.

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-FICC-2005-15 and should be submitted on or before November 18, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52648; File No. SR-NYSE-2005-63]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange's Proposal To Place an Immediate Moratorium on the Qualification and Registration of New Competitive Traders and Registered Competitive Market Makers

October 21, 2005.

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> notice is hereby given that on September 22, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and paragraph (f)(6) of Rule 19b-4 under the Act,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 is an Information Memo announcing a

moratorium on the qualification and registration of new Competitive Traders ("CTs") and Registered Competitive Market Makers ("RCMMs") covered in Rules 110 and 107A, respectively. The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange has decided to study the future viability of CTs and RCMMs in light of the new Hybrid Market environment. While the Exchange conducts this study, it considers it appropriate to place a moratorium on the qualification and registration of new CTs and RCMMs.

CTs and RCMMs were first authorized by the Commission in 1964<sup>5</sup> and 1978,<sup>6</sup> respectively, to generate competition to specialists, add depth and liquidity to the market and create supplemental market making traders on the Exchange. NYSE Rules 110 and 111 govern CTs, and NYSE Rule 107A governs RCMMs. CTs and RCMMs can both conduct proprietary trading under the market maker exemption found in paragraph (1)(A) of Section 11(a) of the Act.<sup>7</sup> CTs' trading must be at least 75% stabilizing, and RCMMs must be ready to enter the market with one round lot if called upon by a floor official or broker to narrow the quotation spread or add liquidity to the market.

The Exchange's rules require that members must be registered by the Exchange before they are able to conduct business as a CT or RCMM, and in order to be registered must, besides

<sup>5</sup> NYSE Rule 110 (amended May 21, 1964 and July 16, 1964, effective August 3, 1964).

<sup>6</sup> Securities and Exchange Act Release No. 14718 (May 1, 1978), 43 FR 19738 (May 8, 1978) (SR-NYSE-78-24).

<sup>7</sup> 15 U.S.C. 78k(a)(1)(A).

<sup>10</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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).