

Federal Energy Regulatory Commission on either Form U-12(I)-A or Form U-12(I)-B. The filings must provide, among other things, the identity of the representative, the person's position and compensation and a quarterly statement of those expenses not incurred in the ordinary course of business. Employees appearing for the first time must file this information on Form U-12(I)-A within ten days of an appearance. Employees appearing on a regular basis may file the information in advance on Form U-12(I)-B, which will remain valid for the remainder of the year in which it was first filed and for the following two calendar years. Thereafter, it may be renewed for additional three-year periods within thirty days of the expiration of the prior filing. The information collection prescribed by Form U-12(I)-A and Form U-12(I)-B is required by rule 71 under the Act. Rule 71 implements section 12(i) of the Act, which expressly requires the filing of the prescribed disclosure information with the Commission in the interest of investors and consumers. The Commission estimates that the total annual reporting burden of collections under rule 71 is 167 hours (250 responses  $\times$  forty minutes = 167 burden hours).

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

There is no recordkeeping requirement for the rule 71 reporting duty. It is mandatory that qualifying employees provide the information required by rule 71. There is no requirement to keep the information confidential, because it is public information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 2, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4-3035 Filed 11-5-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 58 and Form U-9C-3; SEC File No. 270-400; OMB Control No. 3235-0457.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget for extension of the previously approved collection of information discussed below.

Rule 58 [17 CFR 250.58], under the Public Utility Holding Company Act of 1935 ("Act"), as amended (15 U.S.C. 79 *et seq.*) allows registered holding companies and their subsidiaries to acquire energy-related and gas-related companies. Under that rule, acquisitions are made, within certain limits, without prior Commission approval under section 10 of the Act. To monitor compliance, the rule requires that within sixty days after the end of the first calendar quarter in which any exempt acquisition is made, and each calendar quarter thereafter, the registered holding company is required to file with the Commission a Certificate of Notification on Form U-9C-3 containing the information prescribed by that form. The information collection by the Commission is required by rule 58. The Commission uses this information to determine the existence of financial detriment, regarding the acquisition of certain energy-related companies, to the interests the Act is designed to protect. The Commission estimates that the total annual reporting burden is 464 annual burden hours to comply with these requirements, *i.e.*, 29 respondents  $\times$  16 = 464 burden hours.

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 2, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50617; File No. SR-FICC-2004-01]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change to Amend the Government Securities Division and the Mortgage-Backed Securities Division Membership Rules

November 1, 2004.

#### I. Introduction

On January 9, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on April 28, 2004, amended proposed rule change SR-FICC-2004-01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on September 23, 2004.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

FICC is amending the membership rules of its Government Securities Division ("GSD") and its Mortgage-Backed Securities Division ("MBSD") to (1) eliminate the requirement that the conversion to U.S. dollars be made by the applicant or member prior to

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

<sup>2</sup> Securities Exchange Act Release No. 50402 (September 16, 2004), 69 FR 57111.

submitting financial information to FICC unless such conversion is specifically requested by FICC, (2) eliminate the requirement that FICC make a determination as to the adequacy of an applicant's personnel, physical facilities, books and records, accounting systems, or internal procedures, (3) require that a non-U.S. applicant represent to FICC in writing that it is regulated in a way that is generally comparable to the way in which domestic FICC members are regulated, (4) add a requirement to the GSD's rules that a non-U.S. netting applicant represent in writing that it is in compliance with the financial reporting and responsibility standards of its home country, and (5) eliminate the requirement that GSD comparison-only applicants submit financial information to FICC.

#### *1. Amend the Rules of the GSD and MBSB That Require Financial Information Submitted by an Applicant To Be in Dollar Equivalents*

When FICC receives financial information from non-U.S. members and applicants, FICC's credit risk staff will perform the conversion to U.S. dollars whenever it is necessary. The credit risk staff will perform the conversion as of the date of the financial statements. Therefore, FICC is eliminating the current requirement that the conversion to U.S. dollars be made by the applicant or member prior to submitting financial information to FICC unless such conversion is specifically requested by FICC.

#### *2. Amend the Operational Capability Requirement Contained in the Rules of the GSD and the MBSB*

FICC's current operational capability rules are too broad and impose upon FICC an obligation to make determinations with respect to the operational capability of an applicant or member that FICC staff is not equipped or trained to make.<sup>3</sup> Such determinations are more appropriately left to the applicant or member's designated examining authority. The operational capability aspect that is relevant to FICC and upon which FICC must make a determination is the ability of an applicant or member to send input to FICC and to receive output from FICC on a timely and accurate basis. Therefore, FICC is eliminating the requirement that it make a

<sup>3</sup> For example, the GSD rules currently require that a determination be made with respect to whether the membership applicant has adequate personnel, physical facilities, and accounting systems, among other things, to satisfactorily handle transactions.

determination as to the adequacy of an applicant's personnel, physical facilities, books and records, accounting systems, or internal procedures.

#### *3. Amend the Comparability Requirement of the GSD's Rules for Non-U.S. Members*

The GSD rules currently provide that a non-U.S. entity shall be eligible to become a netting member if FICC has determined that the entity is regulated in its home country in a way that is generally comparable to the way in which similar domestic members are regulated. The comparability determination has been difficult to make because there is no objective set of guidelines that FICC can use to confirm the comparability requirement. As a result, comparability determinations have necessarily become judgment calls made by FICC staff using information provided by the applicant.

Because the netting service is a guaranteed service and because FICC only accepts regulated entities as members, FICC should focus on making sure that its non-U.S. members (as is the case with its domestic members) are regulated by a financial regulatory authority in their home country in certain key areas as opposed to being concerned with "comparability" of regulation. These key areas are maintenance of relevant books and records, regular inspections and examinations, and minimum financial standards. Therefore, FICC is amending the comparability requirement to require that the applicant represent to FICC in writing that it is regulated in these key areas.<sup>4</sup> In conjunction with this change, FICC is adding a requirement to the GSD's rules that a non-U.S. netting applicant represent in writing that it is in compliance with the financial reporting and responsibility standards of its home country.<sup>5</sup>

#### *4. Amend the GSD's Rules That Require Comparison-Only Applicants and Members To Submit the Same Financial Information as Netting Applicants and Members*

The GSD's comparison-only service is not a guaranteed service. Comparison-only members do not have minimum financial requirements and are not required to make clearing fund deposits. Therefore, FICC is eliminating the requirement that GSD comparison-only applicants submit financial information to FICC. The GSD's rules will continue to give FICC the ability to require

<sup>4</sup> This approach is currently used by the Emerging Markets Clearing Corporation ("EMCC").

<sup>5</sup> Id.

comparison-only members to submit financial information.

In addition to these proposed rule changes, FICC is making a technical change to the rules of the MBSB to move language relating to cross-guaranty agreements to a more appropriate place in the rules.

### **III. Discussion**

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to remove impediments to the perfection of a national system for the prompt and accurate clearance and settlement of securities transactions and must not be designed to permit unfair discrimination in the admission of participants or among participants in the use of FICC.<sup>6</sup> The Commission finds that FICC's proposed rule change is consistent with these requirements because it refines and improves FICC's rules and procedures with regard to applicants and members.

### **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-2004-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E4-3051 Filed 11-5-04; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50604; File No. SR-NASD-2004-155]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish Access Fees for Non-NASD Members Using Nasdaq's Brut Facility**

October 28, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 17 CFR 200.30-3(a)(12).