SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52157; File No. SR–FICC–2005–11]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Institute a Netting Process for Fail Deliver and Fail Receive Obligations for Netting Members in Its Government Securities Division

July 28, 2005.

I. Introduction

On May 19, 2005, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2005–11 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 24, 2005.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The rules of FICC's Government Securities Division (''GSD'') provide that FICC may, in its sole discretion, net a netting member's fail deliver and fail receive obligations with the member's current settlement obligations. FICC is amending the GSD's rules to institute this fail netting process on a daily basis.

Since the implementation of the GSD's netting system (by FICC's predecessor, the Government Securities Clearing Corporation), outstanding fails have been processed separately from new trading activity. Demand by members for the netting of fails was initially low due to the fact that many members could not properly account for netted fails in their proprietary systems. In addition, demand for netting of fails remained low until the summer of 2003 when the market experienced significant fails in the Treasury 10-year note due May 2013.

In recent years, FICC has been integrally involved in assisting the industry in addressing significant fail situations. On several occasions, FICC intervened by supporting special netting of members' fails with members' current settlement activity. While this procedure helped alleviate the number of open fails and associated settlement issues and risks, it was only an intermediate step in resolving the need for the more regular fail processing proposed herein. Moreover, the industry's continued experience with fails has caused a heightened demand on the part of members for the GSD to institute such a routine process.

Pursuant to the proposed rule change, the GSD will implement a methodology whereby outstanding member fail obligations will routinely be netted with current settlement activity. This process will provide reduced risk exposure to members because it will facilitate settlement by allowing members to close open fails on their books on a daily basis, as well as reduce the number of outstanding clearance obligations at FICC.

FICC does not anticipate an undue burden on members as a result of this proposal. The GSD has issued an Important Notice[3] to all members seeking feedback on the proposed change, and to date, the substance of any feedback received has been positive.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[4] The Commission finds that FICC's proposed rule change is consistent with this requirement because it will enable FICC to reduce the risks posed by large numbers of open fail positions.

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,[5] that the proposed rule change (File No. SR–FICC–2005–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 51865 (June 17, 2005), 70 FR 36679.

[3] Important Notice GOV028.05 (March 10, 2005).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52162, File No. SR–MSRB–2005–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Regarding Amendments to Rule G–40, on Electronic Mail Contacts, and Form G–40

July 29, 2005.

On May 26, 2005, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of amendments to Rule G–40, on electronic mail contacts, and Form G–40 that would: (i) Eliminate the need for paper submission of original forms; (ii) require each broker, dealer and municipal securities dealer (collectively ''dealers'') to maintain an Internet electronic mail account to permit communication with the MSRB; and (iii) require each dealer to review and, if necessary, update its Primary Contact information each calendar quarter. The proposed rule change was published for comment in the **Federal Register** on June 28, 2005.[3] The Commission received no comment letters regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB[4] and, in particular, the requirements of Section 15B(b)(2)(I) of the Act which authorizes the MSRB to adopt rules that provide for the operation and administration of the MSRB.[5] In particular, the Commission finds that the proposed rule change will facilitate effective electronic communication between dealers and the MSRB, and that by ensuring MSRB requirements for electronic communication are substantially similar to NASD requirements, it will facilitate dealer understanding of, and compliance with, these requirements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51892 (June 21, 2005), 70 FR 37142 (June 28, 2005).

[4] In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–4(b)(2)(I).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–MSRB–2005–08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52156; File No. SR–NASD–2005–091]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Regarding the Nasdaq Opening Process for Initial Public Offerings

July 28, 2005.

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 July 20, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposal as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with 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 the Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to modify Rule 4704(c)(1) to improve the opening of stocks that are the subject of an Initial Public Offering. Nasdaq has designated this proposal as non-controversial and has provided the Commission with a written description of the proposal in accordance with Rule 19b–4(f)(6)(iii) under the Act.[5] This rule proposal, which is effective upon filing with the Commission, would become operative on August 22, 2005.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[6]

* * * * *

Rule 4704 Opening Process for Nasdaq-listed Securities

(a)–(b) No Change.

(c) Nasdaq-listed securities [that are not designated by Nasdaq to participate in the] *in which no* Nasdaq Opening Cross *occurs* shall begin trading at 9:30 a.m. or, in the case of Nasdaq-listed securities in which trading is halted pursuant to Rule 4120(a), at the time specified by Nasdaq pursuant to Rule 4120 in the following manner:

(1) At 9:30 or at the time specified by Nasdaq pursuant to Rule 4120 the system shall suspend processing as set forth in paragraph (b) in order to open and integrate Regular Hours orders into the book in time priority*; provided, however, that in the case of an Initial Public Offering halted pursuant to Rule 4120(a)(7), the Issuer's Initial Public Offering Price shall be entered on the bid side of the market as the oldest quotation.*

(2)–(4) No Change.

(d) No Change.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Rule 4704(c)(1) currently provides that at 9:30 a.m. the system shall stop processing according to the pre-opening instructions set forth in Rule 4704(b) and begin to construct the Nasdaq book for the opening of trading. In the case of an Initial Public Offering (''IPO''), the first step in that process is to add quotes and orders in that security to the Nasdaq book in time priority.

Nasdaq has determined that the process currently set forth in Rule 4704(c) as applied to IPOs can be improved by programmatically entering the Issuer's Public Offering Price as the first quotation on the bid side of the market. The current process can create unnecessary volatility in an IPO because, unlike other securities, there are no existing quotes and orders in the Nasdaq book against which to integrate new quotes and orders. Due to this lack of a baseline against which new quotes and orders are measured before entry, the first quotes entered into the system for an IPO can vary significantly even in instances where the security ultimately opens at or near the IPO price. As a result, the initial executions in an IPO, even successive executions, can vary significantly from each other and can create the appearance of volatility.

By entering the Issuer's Public Offering Price as the first quotation on the bid side of the market, Nasdaq hopes to provide a baseline against which subsequent quotes would be measured and thereby reduce the potential for volatility at the open. This should happen in two ways. First, displaying a quotation at the Issuer's Public Offering Price should encourage market participants to enter quotations and orders that are marketable at that price. Second, the execution sequence at the opening of trading would start from the Issuer's Public Offering Price and revolve around that price, rather than potentially starting from an extreme price and moving towards the Issuer's price.

This proposal represents a minor technical enhancement to Nasdaq's systems because Nasdaq already enters the Issuer's Public Offering Price into its systems. Nasdaq currently enters the Issuer's Public Offering Price as the previous day's closing price for an IPO, and uses it as the baseline for calculating the daily price percentage change for the IPO. Because the Issuer's Public Offering Price already resides within Nasdaq systems as the oldest entered price, it is a minor technical change to display that price as a quotation and to execute it in the approved opening process.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(6) of the Act,[8] in particular, in that it is

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[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] Changes are marked to the rule text that appears in the electronic NASD Manual found at the NASD Web site at (*http://www.nasd.com*).

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(6).