SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59569; File No. SR-FICC-2009-03)

March 12, 2009

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule to Impose a Charge on Members with a Fail-to-Deliver in Treasury Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 25, 2009, The Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change No. SR-FICC-2009-03, which is described in Items I, II, and III below and have been prepared primarily by the FICC. The Commission is publishing this notice to solicit comments from interested parties on the proposed rule change as.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will impose a charge on members with a fail-to-deliver position in treasury securities.[2]

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.[3]

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

2 The exact text of the FICC's proposed rule change can be found in Attachment 1 of this filing or at http://www.dtcc.com/downloads/legal/rule_filings/2009/ficc/2009-03.pdf.

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

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

1. Purpose

The Treasury Markets Practices Group ("TMPG"), a group of market participants active in the treasury securities market that is sponsored by the Federal Reserve Bank of New York (the "FRBNY"), has been in the process of devising ways to address the persistent settlement fails in treasury securities transactions that have arisen, according to the TMPG, due to the recent market turbulence and low short-term interest rates. In order to encourage market participants to resolve fails promptly, the TMPG has proposed for adoption a "best practice" that would call for the market-wide assessment of a charge on fail-to-deliver positions. As part of this implementation of this "best practice," the TMPG has asked the Government Securities Division of FICC ("GSD") to impose this charge on failed positions involving treasury securities within FICC.

The proposed charge will be equal to the product of net money due on the failed position and three (3) percent per annum minus the Target Fed funds target rate that is effective at 5:00 p.m. Eastern Standard Time on the business day prior to the originally scheduled settlement date and will be capped at three (3) percent per annum. The charge will be applied daily and will be a debit on the member's GSD monthly bill for a fail-to deliver position and a credit on the member's GSD monthly bill for those with fail-to-receive position.

The following example illustrates the manner in which the proposed fails charge would apply:

Member A fails to deliver today on a $50 million position on which he is owed $50.1 million. The Target Fed funds rate yesterday at 5:00 p.m. was one (1) percent. The fails charge will be two (2) percent per annum and will be applied to the funds amount of $50.1 million, thus equaling a charge of $2,783.33 for that day. The bill of the member failing to deliver will reflect a debit of $2,783.33.

In the event that FICC is the failing party because, for example, it received securities too close to the close of the Fedwire for redelivery, the fail charge will be distributed pro rata to the netting members based upon usage of the GSD's services, which is the same methodology that is used when FICC incurs finance charges.[4]

The proposed rule change provides that the Credit and Market Risk Management Committee of FICC's Board of Directors will retain the right to revoke application of the charge if industry events or practices warrant such revocation.

2. <u>Statutory Basis</u>

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act, as amended,[5] and the rules and regulations thereunder because the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions by discouraging persistent fails-to-deliver in treasury securities and thereby not adversely affecting the safeguarding of securities or funds in FICC's control or for which it is responsible.

(B) <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

FICC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[4] FICC Rules, Section 6 of Rule 12.

[5] 15 U.S.C. 78q-1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

FICC has neither solicited nor received written comments on the proposed rule change. 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

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. 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. Please include File Number SR-FICC-2009-03 in the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FICC-2009-03. 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 10:00 a.m. and 3:30 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the FICC and on the FICC's Web site, 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-2009-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon
Deputy Secretary

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[6] 17 CFR 200.30-3(a)(12).

ATTACHMENT 1

Underlined, boldface text indicates additional language
[Bracketed, boldface text] indicates deleted language

GOVERNMENT SECURITIES DIVISION RULEBOOK

RULE 11 – NETTING SYSTEM

Section 14 – Fails Charge

If a Netting Member does not satisfy a Deliver Obligation of Treasury securities on a particular Business Day, the Corporation shall apply a debit charge on the funds amount associated with the Netting Member's failed position (the "fails charge"). If a Netting Member fails to receive Securities representing its Receive Obligation of Treasury securities on a particular Business Day, the Corporation shall credit the Member in the amount of the fails charge.

The fails charge shall be the product of the (i) funds associated with a failed position and (ii) 3 percent per annum minus the Target Fed funds target rate that is effective at 5 p.m. EST on the Business Day prior to the originally scheduled settlement date, capped at 3 percent per annum.

In the event that the Corporation is the failing party because the Corporation received Securities too near the close of Fedwire for redelivery or for any other reason, the fail charge will be distributed pro rata to the Netting Members based upon usage of the Government Securities Division's services.

At the end of each calendar month, the Corporation shall accrue a Netting Member's debits and credits and the resulting amount (either a debit or credit) shall be included in the Member's monthly bill.

The Board shall have the right, in its sole discretion, to revoke application of the charge if industry events or practices warrant such revocation.