



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item 1 and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change.

(a) The purpose of the present filing is to amend the rules of the Government Securities Division ("GSD") of Fixed Income Clearing Corporation ("FICC") to allow for direct membership for non-domestic entities.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization.

(a) FICC received approval to file the present rule filing from the Credit and Market Risk Management Committee of the Board of Directors on August 20, 2008.

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

(a) Currently, Rule 2 ("Members") of the GSD rules includes a broad category for "foreign netting members." GSD Rule 2A ("Initial Membership Requirements") sets forth membership criteria for these firms, including among other requirements, that the entity be regulated in its home country by a financial regulatory authority and that it be in compliance with the financial reporting and responsibility standards set by its home country regulator.

FICC has organized its Rules and various membership agreements to minimize risks posed by the admission of non-domestic entities to afford itself the fullest possible benefits and protections of various state and federal bankruptcy rules and regulations. For this reason, historically the GSD has accepted only foreign banks with U.S. branches or agencies into the "foreign netting member" category of GSD membership. While this is not technically a requirement in the current GSD rules, this limitation was imposed by FICC due to various state and federal bankruptcy law "safe harbors" which FICC could rely upon, and which are applicable to a domestic branch, in the event of an insolvency of the non-domestic member. These safe harbors include "ring fencing" provisions allowing for setting aside a domestic branch's assets for distribution to the branch's creditors, and also reliable procedures for the protection of creditors in the case of a foreign entity's default, including recognizing security interests and netting agreements, as well as rights to access member-posted collateral.

Recently, U.S. bankruptcy laws have changed such that the reach of federal safe harbors have expanded to apply to non-domestic entities without a U.S. branch or agency. The expansion of these statutes has provided FICC with comfort that, in the event of a non-domestic member insolvency where the member did not have a domestic branch, current bankruptcy law would provide protection for the enforcement of FICC's rights,

including accessing collateral posted at FICC by the non-domestic member, akin to the protection available for a U.S. member.<sup>1</sup>

The present rule filing would remove GSD Rule references to domestic branches or agencies with respect to foreign members, and facilitate “direct” membership for these entities at the GSD.<sup>2</sup> Foreign applicants will still be required to meet the minimum financial requirements currently set forth in GSD Rule 2A for foreign netting members,<sup>3</sup> and those entities accepted into membership will be required to comply with all current Rule provisions applicable to foreign netting members.

(b) The present filing is consistent with the requirements of the Securities Exchange Act of 1934, as amended (the “Act”), and the rules and regulations thereunder applicable to FICC. This rule filing allows for direct membership for non-domestic entities applying to be netting members of the GSD. The present rule filing effects a change in an existing service offered by the GSD of FICC, and therefore does not adversely affect the safeguarding of securities or funds in FICC’s control, or for which it is responsible.

4. 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.

5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Members, 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.

6. Extension of Time Period for Commission Action.

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<sup>1</sup> Historically, the GSD’s concern centered on ancillary proceedings that might be brought by the foreign liquidator in a U.S. bankruptcy court to seek to apply foreign law to the disposition of an insolvent foreign member’s assets. The U.S. Bankruptcy Code has been amended to provide that the “safe harbors” are available in such a proceeding (which was not that case prior to the amendments of the Code).

<sup>2</sup> The Securities and Exchange Commission has approved similar rule filings submitted by The Depository Trust Company and the National Securities Clearing Corporation. *See* Rel. No. 34-58345, File No. SR-DTC-2007-16 and Rel. No. 34-58344, File No. SR-NSCC-2007-15.

<sup>3</sup> The GSD’s rules state that if an applicant is a foreign entity that is applying to become a “foreign netting member”, it must satisfy the minimum financial requirements (defined by reference to regulatory capital as defined by the applicant’s home country regulator) that are applicable to the netting system membership category that the FICC determines would be applicable to the foreign firm if it were organized or established under U.S. law.

FICC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2).

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.
- (d) Accelerated effectiveness is requested pursuant to Section 19(b)(2) in order to accommodate non-domestic entities who have requested to join the GSD directly.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission.

The present rule filing is based on similar filing submitted by the Depository Trust Company and National Securities Clearing Corporation. Both such filings have been approved by the Commission.

9. Exhibits

Exhibit 1 - Notice of proposed rule change for publication in the Federal Register.

Exhibit 5- Proposed rule changes

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-FICC-2009-02)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by the Fixed Income Clearing Corporation ("FICC") to amend the rules of the Government Securities Division to allow for direct membership for non-domestic entities.

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Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on \_\_\_\_\_, FICC filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FICC. 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 text of the proposed rule change is attached hereto as Exhibit 5.

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 such statements.

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

(i) Currently, Rule 2 ("Members") of the GSD rules includes a broad category for "foreign netting members." GSD Rule 2A ("Initial Membership Requirements") sets forth membership criteria for these firms, including among other requirements, that the entity be regulated in its home country by a financial regulatory authority and that it be in

compliance with the financial reporting and responsibility standards set by its home country regulator.

FICC has organized its Rules and various membership agreements to minimize risks posed by the admission of non-domestic entities to afford itself the fullest possible benefits and protections of various state and federal bankruptcy rules and regulations. For this reason, historically the GSD has accepted only foreign banks with U.S. branches or agencies into the "foreign netting member" category of GSD membership. While this is not technically a requirement in the current GSD rules, this limitation was imposed by FICC due to various state and federal bankruptcy law "safe harbors" which FICC could rely upon, and which are applicable to a domestic branch, in the event of an insolvency of the non-domestic member. These safe harbors include "ring fencing" provisions allowing for setting aside a domestic branch's assets for distribution to the branch's creditors, and also reliable procedures for the protection of creditors in the case of a foreign entity's default, including recognizing security interests and netting agreements, as well as rights to access member-posted collateral.

Recently, U.S. bankruptcy laws have changed such that the reach of federal safe harbors have expanded to apply to non-domestic entities without a U.S. branch or agency. The expansion of these statutes has provided FICC with comfort that, in the event of a non-domestic member insolvency where the member did not have a domestic branch, current bankruptcy law would provide protection for the enforcement of FICC's rights, including accessing collateral posted at FICC by the non-domestic member, akin to the protection available for a U.S. member.<sup>1</sup>

The present rule filing would remove GSD Rule references to domestic branches or agencies with respect to foreign members, and facilitate "direct" membership for these entities at the GSD.<sup>2</sup> Foreign applicants will still be required to meet the minimum financial requirements currently set forth in GSD Rule 2A for foreign netting members,<sup>3</sup> and those entities accepted into membership will be required to comply with all current Rule provisions applicable to foreign netting members.

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<sup>1</sup> Historically, the GSD's concern centered on ancillary proceedings that might be brought by the foreign liquidator in a U.S. bankruptcy court to seek to apply foreign law to the disposition of an insolvent foreign member's assets. The U.S. Bankruptcy Code has been amended to provide that the "safe harbors" are available in such a proceeding (which was not that case prior to the amendments of the Code).

<sup>2</sup> The Securities and Exchange Commission has approved similar rule filings submitted by The Depository Trust Company and the National Securities Clearing Corporation. *See* Rel. No. 34-58345, File No. SR-DTC-2007-16 and Rel. No. 34-58344, File No. SR-NSCC-2007-15.

<sup>3</sup> The GSD's rules state that if an applicant is a foreign entity that is applying to become a "foreign netting member", it must satisfy the minimum financial requirements (defined by reference to regulatory capital as defined by the applicant's home country regulator) that are applicable to the netting system membership category that the FICC determines would be applicable to the foreign firm if it were organized or established under U.S. law.

(ii) The present filing is consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act"), and the rules and regulations thereunder applicable to FICC. This rule filing allows for direct membership for non-domestic entities applying to be netting members of the GSD. The present rule filing effects a change in an existing service offered by the GSD of FICC, and therefore does not adversely affect the safeguarding of securities or funds in FICC's control, or for which it is responsible.

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

Within 35 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 90 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 may be submitted by using the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or send an e-mail to [rule-comment@sec.gov](mailto:rule-comment@sec.gov). Please include File No. [XX] on the subject line.
- Paper comments should be sent in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549-1090.

All submissions should refer to File Number [XX]. 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 Room Section 100 F Street, NE, Washington DC 20549-1090. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. 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 submission should refer to the file number above and should be submitted within \_\_\_\_\_ days after the date of publication.

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

Nancy M. Morris

**Bolded, underlined text** indicates added language  
**[Bolded, bracketed text]** indicates deleted language

FIXED INCOME CLEARING CORPORATION

GOVERNMENT SECURITIES DIVISION

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RULE 4 - CLEARING FUND AND LOSS ALLOCATION

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Section 2 - Required Fund Deposit

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**[(d)]** **The amount of Required Fund Deposit to be made by a Foreign Netting Member that is a non-U.S. bank operating out of a branch or agency located in the United States shall be determined pursuant to subsection (b) above.**

**[(e)]** **d** Each Category 1 Inter-Dealer Broker Netting Member shall be subject to the collateral deposit requirements set forth in Section 7 of this Rule.

**[(f)]** **e** The initial Required Fund Deposit of each Netting Member, other than a Category 1 Inter-Dealer Broker Netting Member, shall be set by the Corporation based upon the expected nature and level of such Member's activity.

**[(g)]** **f** The Corporation shall determine the Required Fund Deposit of a Non-Conversion Participating Member that is a Netting Member as if such Member were a Conversion-Participating Member.

**[(h)]** **g** The Total Amount of the Required Fund Deposit determined in accordance with the foregoing provisions of this Rule may be reduced by the Corporation, in its sole discretion, in the case of a Cross-Margining Participant by an amount not to exceed the sum of any "Cross-Margining Reductions" as calculated on the current Business Day for such Cross-Margining Participant in accordance with the applicable Cross-Margining Agreements.

**[(i)]** **h** Notwithstanding anything to the contrary in this Rule, the Corporation may require a Netting Member to make and maintain a higher Required Fund Deposit than the amount as noted above, if the Corporation determines that such higher Required Fund Deposit is necessary to protect the Corporation and its Members from the risk (the "Legal

Risk”) that the Corporation, as a result of a law applicable to a Netting Member’s insolvency or bankruptcy, may be delayed or prohibited from: (i) accessing any portion of the Netting Member’s Required Fund Deposit, (ii) netting, closing out or liquidating transactions, or setting off obligations, or taking any other action contemplated by Rule 4 (Clearing Fund and Loss Allocation), Rule 21 (Restrictions on Access to Services), Rule 22 (insolvency of a Member) or Rule 22A (Procedures for When the Corporation Ceases to Act), or (iii) otherwise exercising its rights pursuant to these Rules.

**[(j)] i** Notwithstanding anything to the contrary in this Rule, the Corporation may require a Netting Member’s Required Fund Deposit to be in proportions of cash, Eligible Clearing Fund Securities and Eligible Letters of Credit that the Corporation determines to be necessary to protect itself and its Members from Legal Risk.

**[(k)] i** Notwithstanding anything to the contrary above, the Corporation, in its sole discretion, may secure a loan made to a Repo Broker for purposes of satisfying that Repo Broker’s Funds-Only Settlement Amount obligation with that Repo Broker’s Clearing Fund deposit made to the Corporation.

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