

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-DTC-2003-07. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC.

All submissions should refer to File No. SR-DTC-2003-07 and should be submitted by May 19, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47713; File No. SR-FICC-2003-02]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Cross-Guaranty Agreements to Which FICC Is a Party

April 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 8, 2003, the Fixed Income Clearing Corporation ("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 primarily 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 proposed rule change relates to cross-guaranty agreements to which FICC is a party.

#### 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.<sup>2</sup>

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

FICC is proposing to amend the rules ("Rules") of its Government Securities Division and Mortgage Backed Securities Division ("Divisions") to make clear that, in the event that an entity that is a member of both Divisions becomes a defaulting member as defined in a cross-guaranty agreement to which FICC is a party and FICC chooses to participate in the arrangement, FICC

will first offset the liquidation results of the Divisions prior to presenting its available net resources to other participating clearing corporations.

FICC's Rules provide that FICC may enter into cross-guaranty agreements. Cross-guaranty agreements are an important risk protection measure for clearing agencies. Generally, these agreements contain a guaranty from one clearing agency to another clearing agency that can be invoked in the event of the default of a common member. The guaranty generally provides that the excess resources of a defaulting common member remaining after the defaulting common member's obligations to the guaranteeing clearing agency have been satisfied will be used to satisfy the obligations of the defaulting common member that remain unsatisfied at the other clearing agency. The Multilateral Agreement provides for the allocation of such excess resources among all clearing corporations in a deficit position with respect to a defaulting common member.

If a clearing corporation that is a party to the multilateral cross-guaranty agreement<sup>3</sup> suspends a person or declares a person insolvent pursuant to its rules and if such person is a common member of two or more clearing agencies, such clearing agency must give each other clearing agency a notice that it has ceased to act for the member and that it will participate in the arrangement. Each participating clearing agency has a certain amount of time pursuant to the multilateral cross-guaranty agreement to determine its "available net resources," which is the sum, positive or negative, derived after the application of any applicable liquidation procedures by adding the amounts owed by the participating clearing agency to the defaulting member and subtracting the amounts owed by the defaulting member to the participating clearing agency.

FICC desires to make clear in its rules that it will first offset the available net resources of each of its Divisions and

<sup>3</sup> FICC's predecessors, the Government Securities Clearing Corporation ("GSCC") and the MBS Clearing Corporation ("MBSCC"), filed rule filings in 2001 to enter into a multilateral cross-guaranty agreement with The Depository Trust Company, National Securities Clearing Corporation, Emerging Markets Clearing Corporation, and The Options Clearing Corporation ("Multilateral Cross-Guaranty Agreement") and to make incidental rule changes. Securities Exchange Act Release No. 45868 (May 2, 2002), 67 FR 31394 [File Nos. SR-DTC-2000-21, SR-OCC-2001-01, SR-NSCC-2001-13, SR-EMCC-2001-02, SR-GSCC-2001-12, and SR-MBSCC-2001-03]. Prior to that time, GSCC and MBSCC were parties to various bilateral cross-guaranty arrangements, which were terminated when the parties entered into the multilateral cross-guaranty agreement.

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

<sup>2</sup> The Commission has modified parts of these statements.

<sup>5</sup> 17 CFR 200.30-3(a)(12).