

("Act"),¹ notice is hereby given that on August 5, 2003, Fixed Income Clearing Corporation ("FICC"),² 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 parties.

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

The purpose of the proposed rule change is to allow FICC to modify how rebates are calculated and distributed under Section IX of the Government Securities Division ("GSD") fee structure.

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

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

The GSD's rules currently provide for FICC's periodic disbursement of rebates of excess net income back to GSD members ("Rebate Policy").⁴ At the time the Rebate Policy was established by GSCC, management and the board of directors determined that \$30 million in shareholders' equity was sufficient to provide GSCC adequate risk protection and also to provide a monetary "cushion" for temporary losses and decreases in volumes. Pursuant to the

Rebate Policy, shareholders' equity over and above the \$30 million threshold would be rebated, pro rata, to members.

Subsequent to implementing the Rebate Policy, several events occurred which adversely impacted GSCC's, and later FICC's, ability to issue the rebates as planned. Due to the terrorist attacks on the World Trade Center on September 11, 2001, GSCC experienced a inordinate number of operational problems that resulted in increased interest payment obligations and liability issues. These matters were not fully resolved until the fourth quarter of 2002 and ultimately resulted in a reduction of GSCC's capital to \$29.2 million, below the threshold provided for in GSCC's rules pertaining to the Rebate Policy. The events of 9/11 also made the need for dramatically improved business continuity planning of paramount importance. Industry consensus as to how to best achieve improvements in this area were being developed on an ongoing basis which makes it difficult for GSCC to anticipate future expenses. Finally, following the merger of GSCC and MBSCC to create FICC, the Fixed Income Operations and Planning Committee approved an increase in the amount of the GSD's shareholders' equity required before a rebate from the \$30 million minimum to \$35 million.

FICC is now in a position in this calendar year (2003) to distribute rebates to GSD members due to an adequate level of shareholder equity and higher-than-anticipated income levels at the GSD. In an effort to make the process of distributing these rebates as fair as possible to all GSD members and also to allow FICC sufficient flexibility to address adverse business and risk conditions, FICC is proposing to modify the GSD's Rebate Policy.

Going forward, when calculating rebate amounts, the GSD will take into account each member's payment of comparison, netting, and clearance fees paid to the GSD. While previously only comparison and netting fees were considered, FICC has reconsidered this formula and believes that the inclusion of clearance fees in the rebate calculation will result in a fairer distribution of rebates to all members. When rebates are calculated, GSD members who paid the highest gross amount in all of these fees combined will receive the largest rebates.⁵ In addition, in order to adequately take into account unexpected expenses in a rapidly changing business environment

and allow for flexibility in rebate calculation in instances of a member's consolidation or merger, FICC will alter the GSD's Rebate Policy to allow the GSD needed flexibility in determining when rebates should be distributed and the amount of each rebate allotted members. FICC believes that these changes will result in a Rebate Policy that is equitable to the GSD members while also allowing FICC to protect its members by maintaining sufficient shareholders' equity for business and risk management purposes.

FICC anticipates distributing rebates using the revised formula in August of 2003 (subject to Board consideration and approval). The August rebates will take into account fees paid by members from January 1 through June 30, 2003.

The proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁶ and the rules and regulations thereunder because it will allow FICC to fulfill its mission of operating in a not-for-profit manner consistent with maintaining the integrity of FICC's capital base, financial structure, and risk management process.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have an impact on or impose a 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

The foregoing rule change will take effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and Rule 19b-4(f)(2)⁸ thereunder because the proposed rule constitutes a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission could have summarily abrogated such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

¹ 15 U.S.C. 78s(b)(1).

² The Government Security Clearing Corporation ("GSCC") and the MBS Clearing Corporation ("MBSCC") merged into the Fixed Income Clearing Corporation ("FICC") effective January 1, 2003. FICC operates through two divisions, the Government Securities Division (the "GSD," formerly GSCC) and the Mortgage-Backed Securities Division ("MBSD," formerly MBSCC). Each division has retained its own set of rules. This rule filing will address changes to the rules of GSD.

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

⁴ GSCC established the Rebate Policy in 2001, Securities Exchange Act Release No. 44502 (July 2, 2001), 66 FR 36351 (July 11, 2001) [SR-GSCC-2001-05].

⁵ Rebate amounts will be adjusted for miscellaneous charges as the rule currently provides today.

⁶ 15 U.S.C. 77(q-1)(b)(3)(F).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).