

Securities and Exchange Commission ("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 to amend certain non-option listing rules of the Exchange in response to the adoption of Rule 10A-3 under the Act.³ The proposed rule change would require the audit committee of each issuer of non-option securities listed on the CBOE to comply, where applicable, with the standards for audit committees mandated by Section 10A(m) of the Act⁴ and Rule 10A-3 thereunder. The Exchange also committed to adopt additional listing policies and requirements pertaining to issuer corporate governance.

The proposed rule change was published for comment in the **Federal Register** on October 2, 2003.⁵ The Commission received no comments on the proposal. On November 17, 2003, the CBOE submitted an amendment to the proposed rule change.⁶ This order approves the proposal, publishes notice of Amendment No. 1, and approves Amendment No. 1 on an accelerated basis.⁷

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ Specifically, the Commission finds that the proposal relating to independent audit committees for listed companies is consistent with Section 6(b)(5) of the Act,⁹ which requires, among other things, that the CBOE's rules be

designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Moreover, the Commission believes that the CBOE's proposal to add the new requirements concerning audit committees is appropriate and consonant with Section 10A(m)¹⁰ of the Act and Rule 10A-3 thereunder relating to audit committee standards for listed issuers. The Commission notes that the CBOE intends to file an additional rule proposal relating to other corporate governance listing standards.¹¹

Furthermore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹² to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the CBOE expanded, with respect to investment companies, the scope of the proposed provision regarding complaint procedures. Rule 10A-3 requires audit committees to establish procedures for "the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters."¹³ The amended CBOE proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This revision responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting rules to comply with Rule 10A-3, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.¹⁴ The Commission believes that it is appropriate to accelerate approval of this amendment, because it conforms the rule text to similar rules of the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were approved by the

Commission,¹⁵ and the amendment raises no new substantive issues.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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. 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. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-2003-31 and should be submitted by December 24, 2003.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that Amendment No. 1 is approved on an accelerated basis, and that the proposed rule change (File No. SR-CBOE-2003-31) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48848; File No. SR-FICC-2003-07]

Self-Regulatory Organization; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rebates to Members

November 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

¹⁵ See Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR-NYSE-2002-33 and SR-NASD-2002-141).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.10A-3.

⁴ 15 U.S.C. 78j-1(m).

⁵ See Securities Exchange Act Release No. 48540 (September 25, 2003), 68 FR 56856 ("Notice").

⁶ See letter from David Doherty, Attorney, Legal Division, CBOE, to Ira Brandriss, Special Counsel, Division of Market Regulation, Commission, dated November 14, 2003 ("Amendment No. 1"). In Amendment No. 1, with respect to investment companies, the CBOE expanded the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

⁷ Rule 10A-3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. By the Commission approving the proposed rule change, the Exchange can comply with this deadline.

⁸ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78j-1(m).

¹¹ See Notice at note .

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 240.10A-3(b)(3)(ii).

¹⁴ See Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A-3).

("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).

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. All comment letters should refer to File No. SR-FICC-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 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at <http://www.ficc.com/gov/gov.other.docs.jsp?NS-query=.com>. All submissions should refer to File No. SR-FICC-2003-07 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48840; File No. SR-ISE-2003-29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange Inc., Relating to Requiring the Fingerprinting of Exchange Employees and Independent Contractors and Other Service Providers

November 25, 2003.

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 November 18, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. ISE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ 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 Substance of the Proposed Rule Change

The Exchange is proposing to adopt a new rule pursuant to which it will obtain fingerprints from prospective and current employees, and independent contractors and other service providers, submit those fingerprints to the Attorney General of the United States or his or her designee for identification and processing, and receive criminal history record information from the Attorney General of the United States or his or her designee for evaluation and use in protecting the Exchange's facilities, records, systems, data and other information. The text of the rule amendment is available at the Office of the Secretary of the Exchange and at the Commission.

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

In its filing with the Commission, ISE 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. The ISE 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

The Exchange proposes to require the fingerprinting of prospective and current employees, and independent contractors and other service providers of the Exchange. The events of September 11, 2001, including the resulting temporary disruption in the securities markets, have led national exchanges and lawmakers alike to evaluate various security requirements, with the objective of enhancing investor protection, business continuity and workplace safety. To that end, the Commission has approved fingerprinting rules for the National Association of Securities Dealers, Inc. ("NASD") with respect to employees and independent contractors of The Nasdaq Stock Market, Inc. ("Nasdaq")⁵ and for the New York Stock Exchange ("NYSE") with respect to prospective and current employees, temporary personnel, independent contractors and service providers of each of the Exchange and its principal subsidiaries.⁶ ISE is proposing to adopt a rule establishing a fingerprint-based program that is substantially similar to the Nasdaq and NYSE programs.

The proposed rule is consistent with Section 17(f)(2) of Act⁷ and Rule 17f-2 thereunder,⁸ which require, subject to certain exemptions, a variety of securities industry personnel to be fingerprinted, including every member of a national securities exchange; brokers, dealers, transfer agents, and clearing agencies; and employees of such entities. Although Section 17(f)(2) does not require the Exchange or other self-regulatory organizations to fingerprint their own employees and non-employee service providers, it permits self-regulatory organizations designated by the SEC to have access to

⁵ See Release No. 34-47240 (January 23, 2003), 68 FR 4810 (January 30, 2003) (SR-NASD-2002-113).

⁶ See Release No. 34-48118 (July 1, 2003) 68 FR 41033 (July 9, 2003) (SR-NYSE-2003-18).

⁷ 15 U.S.C. 78q(f)(2).

⁸ 17 CFR 240.17f-2.

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).

⁹ 17 CFR 200.30-3(a)(12).