

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed rule change will provide additional opportunities for price improvement and guaranteed executions at a price at least as good as the NBBO. Additionally, it will allow members to avoid paying taker fees.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

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

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## 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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

customer purchasing an option can be considerably higher on an exchange that charges a taker fee. For example, a customer that enters a marketable limit order to buy 10 contracts for \$0.10 would pay \$100 on CBOE and \$104.50 if executed on an exchange that charges a \$0.45 taker fee (an effective 4.5% increase). Because orders cannot be executed at prices inferior to the NBBO, members are effectively forced to pay taker fees when an exchange with a taker fee structure is at the NBBO and the members' orders are directly routed to such an exchange or indirectly routed to such an exchange through the Intermarket Options Linkage (where the fees are passed through).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

(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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2008-41 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2008-41. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-CBOE-2008-41 and should be submitted on or before June 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57821; File No. SR-FICC-2008-03]

### **Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified, To Eliminate the Coverage Component and Margin Requirement Differential From the Mortgage-Backed Securities Division Participants Fund Calculation**

May 15, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 18, 2008, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on April 21, 2008, amended the proposed rule change 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 Substance of the Proposed Rule Change**

The purpose of the proposed rule change is to modify FICC's Mortgage-Backed Securities Division ("MBSD") participant fund calculation as set forth in Article IV, Rule 1 (Total Required Fund Deposit) by eliminating the Coverage Component and the Margin Requirement Differential from the calculation.

### **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),

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

On August 31, 2007, FICC filed with the Commission and on September 27, 2007, amended proposed rule change SR-FICC-2007-10 pursuant to Section 19(b)(1) of the Act. On March 31, 2008, the Commission approved the proposed rule change.<sup>3</sup>

The rule change modified FICC's MBSD rules, replacing the current participants fund methodology (which used haircuts and offsets) with a Value-at-Risk ("VaR") model, which was expected to better account for market volatility and more thoroughly distinguish levels of risk presented by individual securities.<sup>4</sup>

As approved by the Commission, the revised participants fund calculation included: (1) An end-of-day charge (which is the greater of the VaR-based charge and a defined minimum charge), (2) a Coverage Component (which is an additional charge to bring the participant's coverage to a targeted confidence level), (3) an additional payment (which is called a "Special Charge") as determined by FICC from time to time, and (4) a Margin Requirement Differential (which takes into account intra-day portfolio variations and the potential for a late margin deficit satisfaction).

FICC has determined not to implement the Coverage Component and the Margin Requirement Differential, while it continues to study the methodology. Accordingly, FICC is modifying MBSD Article I (Definitions and General Provisions) and Article IV (Participants Fund) to remove references to these components.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to FICC because the proposed rule change should better enable FICC to assure the safeguarding of securities and funds in its custody or control or for which it is responsible by enabling FICC to more effectively manage the risks presented by participants' activities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FICC does not believe that the proposed rule change will have any impact on 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*

No written comments relating to the proposed rule change have 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 has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(4)<sup>7</sup> thereunder because the proposed rule change effects a change in an existing service of FICC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of FICC or for which it is responsible and (ii) does not significantly affect the respective rights of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate 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.<sup>8</sup>

**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](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2008-03 on the subject line.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(4).

<sup>8</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on April 21, 2008, the date on which the last amendment to the proposed rule change was filed with the Commission. 15 U.S.C. 78s(b)(3)(C).

*Paper Comments*

- Send paper comments 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 SR-FICC-2008-03. 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 changes 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 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at [http://www.dtcc.com/legal/rule\\_filings/ficc/2008.php](http://www.dtcc.com/legal/rule_filings/ficc/2008.php). 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-2008-03 and should be submitted on or before June 12, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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<sup>2</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>3</sup> Securities Exchange Act Release No. 57586 (March 31, 2008), 73 FR 19537 (SR-FICC-2007-10).

<sup>4</sup> VaR is defined to be the maximum amount of money that may be lost on a portfolio over a given period of time, within a given level of confidence.

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 17 CFR 200.30-3(a)(12).