

#### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BatsEDGA-2016-18 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-BatsEDGA-2016-18. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-BatsEDGA-2016-18, and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-78529; File No. SR-FICC-2016-004]**

#### **Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add a Clearing Fund Maintenance Fee**

August 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 29, 2016, 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 by the clearing agency. FICC filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change consists of modifications to the rules of the Government Securities Division ("GSD Rules") of FICC and the rules of the Mortgage-Backed Securities Division ("MBSD Rules") of FICC in order to add a new fee that will be charged to GSD Netting Members and MBSD Clearing Members in connection with the maintenance of the Clearing Fund, as described in greater detail below.<sup>5</sup> GSD Netting Members and MBSD Clearing

Members are collectively referred to herein as "members."

#### **II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### *(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The proposed rule change will add a fee that will be charged to members in connection with the maintenance of the Clearing Fund.

##### **Clearing Fund Maintenance Fee**

Pursuant to the proposed rule change, FICC proposes to introduce a new fee, to be known as the Clearing Fund Maintenance Fee, which will be charged to members in arrears on a monthly basis.

The proposed rule change will (i) diversify FICC's revenue sources and mitigate FICC's dependence on revenues driven by trading volumes and (ii) add a stable revenue source that will contribute to FICC's operating margin by offsetting increasing costs and expenses, as further described below.

##### **Diversify Revenue Sources**

FICC's current revenues are highly variable due to the nature of the clearing services, which are primarily driven by trading volumes, but, as a utility, FICC's expenses are largely fixed. The combination of fixed costs and variable revenues represents a financial risk for FICC. To mitigate such financial risk, FICC is seeking to diversify its variable revenue base with the proposed new fee, which will introduce a revenue source that is not dependent on trading volumes. The Clearing Fund Maintenance Fee will be ratably based on the member's Clearing Fund average cash deposit.

##### **Offset Increasing Costs and Expenses**

FICC seeks to achieve a target operating margin to cover operating expenses and fund capital expenditures as well as investments in its clearing services and risk management infrastructure; however, FICC faces

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

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

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> Capitalized terms not defined herein are defined in the GSD Rules, available at [www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc\\_gov\\_rules.pdf](http://www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf), and the MBSD Rules, available at [www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc\\_mbsd\\_rules.pdf](http://www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf).

continued increasing risk management costs as well as regulatory and compliance-related expenses that need to be offset by revenue growth in order to meet the target operating margin. Such increased costs and expenses, if not offset by revenue growth, could weaken FICC's financial position over time. As such, FICC is seeking to implement the Clearing Fund Maintenance Fee to add an additional revenue source to offset increasing costs and expenses.

Proceeds of the Clearing Fund Maintenance Fee will be used primarily to offset risk management costs, regulatory and compliance expenses and for general operating expenses.

#### Calculation

The amount of the monthly Clearing Fund Maintenance Fee for a member will be calculated monthly, in arrears, as the product of 0.25% and the average of the member's actual cash deposit to the Clearing Fund as of the end of each day of the month, multiplied by the number of days in that month and divided by 360; provided that, the investment rate of return on investment by FICC of cash in the Clearing Fund for that month is equal to or greater than 0.25%. No fee will be charged to any member for a month in which the monthly rate of return on investment of cash in the Clearing Fund is less than 0.25%.

Based on the 2015 average actual cash deposits to the Clearing Fund, the expected annual revenue to be generated by the Clearing Fund Maintenance Fee is approximately \$24 million.

#### Member Impact

The proposed rule change will impose the Clearing Fund Maintenance Fee on all members that are required to make deposits to the Clearing Fund.

The Clearing Fund Maintenance Fee is a monthly fee based ratably upon the amount of the member's daily actual cash deposited to the Clearing Fund; it is applicable when the monthly rate of return on investment of cash in the Clearing Fund is equal to or greater than 0.25%.

Because the Clearing Fund Maintenance Fee per member is proportional to the average monthly cash deposit of the member to the Clearing Fund, members that generate higher levels of activity and make greater use of FICC's services will generally be subject to a higher fee, because such members typically maintain higher Clearing Fund deposits pursuant to the GSD Rules and the MBSD Rules.

FICC views the proposed implementation of the Clearing Fund Maintenance Fee as a prudent way to minimize the magnitude of, and mitigate the need for, potential future increases in other fees.

The proposed change will take effect on August 1, 2016.

#### 2. Statutory Basis

Section 17A(b)(3)(D) of the Act<sup>6</sup> requires that the GSD Rules and MBSD Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The proposed fee is equitably allocated among members because it is based on each member's utilization of FICC's services, as measured by their Clearing Fund deposits. In addition, FICC believes that the proposed fee is reasonable because it will enable FICC to better align its revenue with the costs and expenses required for FICC to provide services to its members with a nominal impact on members. Therefore, FICC believes the proposed rule change is consistent with section 17A(b)(3)(D).<sup>7</sup>

#### (B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed fee will be equitably allocated among members based on each member's utilization of FICC's services. Members that have a higher level of activities and greater use of FICC's services will generally be subject to a higher Clearing Fund Maintenance Fee and members with lower usage will pay less.

#### (C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. 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 pursuant to section 19(b)(3)(A)<sup>8</sup> of the Act and paragraph (f) of Rule 19b-4<sup>9</sup> thereunder. At any time within 60 days of the filing of the

proposed rule change, the Commission summarily may temporarily suspend 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.

#### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2016-004 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR-FICC-2016-004. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's Web site (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f).

available publicly. All submissions should refer to File Number SR-FICC-2016-004 and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78527; File No. SR-BatsBZX-2016-47]

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Closing Contingency Procedure

August 10, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 2, 2016, Bats BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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 the Substance of the Proposed Rule Change

The Exchange is proposing to establish a Closing Contingency Procedure that would enable the Exchange to designate a back-up exchange to provide an official closing price in the event that the Exchange’s market is impaired and unable to execute a closing auction for all or a subset of listed securities under the Exchange’s standard closing procedures. The Commission has recently approved substantially similar proposals submitted by the New York Stock

Exchange LLC (“NYSE”) and the Nasdaq Stock Market LLC (“Nasdaq”).<sup>5</sup>

The text of the proposed rule change is available at the Exchange’s Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

###### Background

The Exchange has robust and resilient systems that are designed to ensure fair and orderly markets, including multiple redundancies and back-up systems. Currently, the Exchange’s Official Closing Price is defined in Rule 11.23(a)(3) as the price disseminated to the consolidated tape as the market center closing trade. In this proposal, the Exchange is proposing to amend Rule 11.23 to establish Closing Contingency Procedures.

As proposed, the Exchange, as a listing market, will designate a back-up exchange to provide an official closing price in the event that the Exchange’s market is impaired and unable to execute a closing auction for all or a subset of listed securities under the standard closing procedures set forth in Rule 11.23(c). The Exchange would invoke the Closing Contingency Procedures only after it determines that

the standard closing procedure is unavailable due to technical difficulties. The Exchange will employ internal testing procedures to determine the availability of each set of operating procedures, and thereby position itself to make and announce such a determination as rapidly as possible. The Exchange would invoke the Closing Contingency Procedures by announcing publicly that its market is impaired and unable to execute a closing auction. If the Exchange makes that announcement prior to 3:00 p.m., Eastern Standard Time (“EST”), the official closing price from the Exchange’s designated back-up exchange would serve as the Exchange’s Official Closing Price. If the Exchange makes that announcement after 3:00 p.m., EST, the Securities Information Processor (“SIP”) would calculate a Volume Weighted Average Price (“VWAP”), described in more detail below. Whether the announcement is made before or after 3:00 p.m., EST, the SIP would publish the Exchange’s Official Closing Price on the Exchange’s behalf either: (1) Based on a message from the Exchange’s back-up exchange or (2) based on the VWAP calculation.

###### Designation of Back-Up

The Exchange proposes to designate NYSE Arca as its official back-up exchange. The Exchange believes that NYSE Arca is best positioned to serve as its back-up for two primary reasons: (1) NYSE Arca and the Exchange’s membership substantially overlaps; (2) NYSE Arca already operates an effective closing cross that it can use to execute a closing transaction in the Exchange’s listed securities.<sup>6</sup> In the event the Exchange is unable to execute a closing auction, the Exchange’s members that are also NYSE Arca members should be technically prepared to transfer liquidity to NYSE Arca to ensure a deeply liquid closing transaction.

The Operating Committees for the CQ/CT and Nasdaq UTP Plans have already voted to modify the SIPs to support this proposal. Specifically, each exchange that is designated as a back-up exchange (Nasdaq and NYSE Arca), will disseminate via the SIPs an official closing price in every listed security marked with the .M sale condition code.

The SIPs will apply the following procedures:

<sup>6</sup> The Exchange notes that quotations and executions for Exchange-listed securities are represented on Tape B, which is also where information regarding NYSE Arca and NYSE MKT listed securities is represented. The Exchange also notes that like the Exchange, NYSE Arca trades securities listed on all tapes (Tapes A, B and C), including securities listed on the Exchange.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release Nos. 78015 (June 8, 2016), 81 FR 38747 (June 14, 2016) (SR-NYSE-2016-18) (“Notice of Filings of Amendment No. 1, and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendment No. 1, To Provide for How the Exchanges Would Determine an Official Closing Price if the Exchanges Are Unable To Conduct a Closing Transaction”); 78014 (June 8, 2016), 81 FR 38755 (June 14, 2016) (SR-NASDAQ-2016-035) (“Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Secondary Contingency Procedures for the Exchange’s Closing Cross”).