

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49113; File No. SR-FICC-2003-08]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Add Adjustable-Rate Mortgage Pass-Through Securities to the GCF Repo Service Repurchase Service

January 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 11, 2003, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") 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

FICC is seeking to add adjustable-rate mortgage pass-through securities ("ARMS") to the GCF Repo service.

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

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

The Government Securities Division ("GSD") of FICC currently accepts Fannie Mae ("FNMA"), Freddie Mac ("FHLMC"), and Ginnie Mae ("GNMA") fixed-rate mortgage pass-through securities ("FRMs") as repurchase agreement collateral in its GCF Repo service.<sup>3</sup> The GSD is proposing to add

ARMS<sup>4</sup> to the GCF Repo service and to amend the GSD Rules to include the appropriate schedules of margin factors, offset classes, and disallowances as they pertain to ARMS.<sup>5</sup>

The GSD believes that ARMS make a logical addition to the categories of securities currently processed in the GCF Repo service for several reasons. ARMS are generally less risky to FICC and investors than FRMs due to their rate reset feature and faster prepayment rates. Both of these factors contribute to shorter effective duration and price fluctuations, resulting in lower margin factors as compared to FRMs. In addition, the correlation factors between ARMS and Treasuries are generally higher than those between FRMs and Treasuries because adjustable rates reflect more of the current rate conditions than fixed rates. Thus, the disallowance factors of ARMS versus Treasuries are smaller than those of FRMs versus Treasuries.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder applicable to FICC because it will promote the prompt and accurate clearance and settlement of securities transactions by enabling the GSD to provide the benefits of its netting, risk management, and settlement services to an expanded pool of securities for its GCF Repo service.

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

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

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.

trade-for-trade settlement on a delivery-versus-payment basis.

<sup>4</sup> ARMS are mortgage loans in which the contract rates are reset periodically at a predetermined spread (or margin) over a specified reference index (such as the one-year Constance Maturity Treasury or 6 month LIBOR).

<sup>5</sup> The GSD is also proposing to make technical corrections to the relevant schedules to remove references to "GSCC" or to replace them with references to the Government Securities Division as appropriate.

<sup>6</sup> 15 U.S.C. 78q-1.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 self-regulatory 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-FICC-2003-08. 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, 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 FICC and on FICC's website at <http://www.ficc.com>.

All submissions should refer to File No. SR-FICC-2003-08 and should be submitted by February 18, 2004.

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

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

<sup>3</sup> The GSD's GCF Repo service enables dealer members to freely and actively trade GCF Repos throughout the day without requiring intraday,

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49114; File No. SR-NASD-2003-201]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend the Trading Activity Fee Rate and Add TRACE-Eligible and Municipal Securities as Covered Securities

January 22, 2004.

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 December 30, 2003, the National Association of Securities Dealers, Inc. ("NASD"), 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 NASD. 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

NASD is proposing to amend Schedule A of the NASD By-Laws to adjust the Trading Activity Fee ("TAF") rate for covered equity securities; to reduce the maximum per trade charge on covered equity securities; and to assess the TAF on corporate debt securities that, under the Trade Reporting and Compliance Engine ("TRACE") rules, are defined as "TRACE-eligible securities" and municipal securities subject to the Municipal Securities Rulemaking Board ("MSRB") reporting requirements. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.<sup>3</sup>

#### Schedule A to NASD By-Laws

\* \* \* \* \*

##### Section 1— Member Regulatory Fees

(a) No Change.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

(A) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness) *except debt securities that are not TRACE-eligible securities*;

(B) All other equity securities traded otherwise than on an exchange; [and]

(C) All security futures wherever executed[.];

(D) *All TRACE-eligible securities wherever executed; and*

(E) *All municipal securities subject to MSRB reporting requirements.*

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(A) through (I) No Change.

(J) Transactions in security futures held in futures accounts; [and]

(K) Transactions in exchange listed options effected by a member when NASD is not the designated options examining authority for that member[.]; *and*

Paragraph (b)(2)(K) becomes effective on January 1, 2004 in accordance with amendment 4 to SR-NASD-2002-148.

(L) *Proprietary transactions in TRACE-eligible securities by a firm that is a member of both NASD and a national securities exchange and that are effected in the firm's capacity as an exchange specialist or exchange market maker.*

NASD may exempt other securities and transactions as it deems appropriate.

(3) Fee Rates\*

statement "Paragraph (b)(2)(K) becomes effective on January 1, 2004 in accordance with amendment 4 to SR-NASD-2002-148" or neglected to change its placement in the proposed rule so as not to separate item (K) from item (L). See pages 3 of 18, and 12 of 18. The Commission expects NASD will file an amendment at a later date to correct this deficiency, and will carefully review future filings to avoid such errors.

\* Trading Activity Fee rates are as follows: Each member shall pay to NASD [\$0.0001]\$0.000075 per share for each sale of a covered equity security, with a maximum charge of [\$10]\$3.75 per trade; \$0.002 per contract for each sale of an option; [and] \$0.04 per contract for each round turn transaction of a security future; *and \$0.00075 per bond for each sale of a covered TRACE-eligible and/or municipal security, with a maximum charge of \$0.75 per trade.* In addition, if the execution price for a covered security is less than the Trading Activity Fee rate ([\$0.0001]\$0.000075 for covered equity securities, \$0.002 for covered option contracts, or \$0.04 for a security future) on a per share, per contract, or

(A) through (C) No Change.

(D) *Each member shall pay to NASD a fee per bond for each sale of a covered TRACE-eligible security and/or municipal security.*

(4) Reporting of Transactions. Members shall report to NASD the aggregate share, bond, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.

(c) through (d) No Change.

\* \* \* \* \*

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

In its filing with the Commission, NASD 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. NASD 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

###### Background

On July 24, 2002, NASD filed with the SEC proposed changes to the Gross Income Assessment ("GIA"), Personnel Assessment ("PA"),<sup>4</sup> and Regulatory Fee.<sup>5</sup> Those fees are used to fund NASD's member regulatory activities, including the regulation of members through examinations, processing of membership applications, financial monitoring, policymaking, rulemaking, and enforcement activities. The changes: (1) Eliminated the Regulatory Fee; (2) instituted a new transaction-based TAF applied across all markets, similar to the SEC's Section 31 Fee; (3) increased the rates assessed to member firms under the PA; and (4) implemented a simplified three-tiered

round turn transaction basis, then no fee will be assessed.

<sup>4</sup> Securities Exchange Act Release No. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002) (SR-NASD-2002-98) (immediately effective TAF pilot program). NASD subsequently filed SR-NASD-2002-148 to give the proposal in SR-NASD-2002-98 a full notice and comment period and to adopt a permanent TAF program. See Securities Exchange Act Release No. 46817 (Nov. 12, 2002), 67 FR 69785 (Nov. 19, 2002).

<sup>5</sup> Securities Exchange Act Release No. 46417 (Aug. 23, 2002), 67 FR 55893 (Aug. 30, 2002) (SR-NASD-2002-99).

<sup>7</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> The Commission notes that NASD filed the proposed rule change with an inconsistency in the numbering of the proposed rule language. See page 3 of 18, as compared with page 11 of 18. The Commission adjusted the text in this notice to correct this technical error. Also, the Commission notes that NASD either failed to remove the