

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of February 16, 2004: A Closed Meeting will be held on Thursday, February 19, 2004, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(5), (7), (9B), and (10) and 17 CFR 200.402(a)(5), (7), (9ii), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the Closed Meeting scheduled for Thursday, February 19, 2004 will be:

Formal orders of investigation;  
Institution and settlement of administrative proceedings of an enforcement nature;  
Institution and settlement of injunctive actions;  
Litigation matter; and  
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: February 10, 2004.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 04-3304 Filed 2-10-04; 4:24 pm]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27798]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 6, 2004.

Notice is hereby given that the following filing(s) has/have been made

with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 3, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 3, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Cinergy Corp. (70-10188)

Cinergy Corp. ("Cinergy" or "Applicant"), 139 East Fourth Street, Cincinnati, Ohio 45202, a registered public-utility holding company under the Act, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 54, 90 and 91.

Cinergy requests authorization to establish a subsidiary captive insurance company ("Cinergy Captive") to engage in the business of insuring or reinsuring certain levels of risk for Cinergy and its associate companies (collectively, "Cinergy System" or "System" and, any constituent company, a "System Company").<sup>1</sup> Cinergy states that it considers risk management a key corporate function, providing for

protection of physical and financial assets. As such, risk management is one of the primary responsibilities of Cinergy Services, Inc. ("Service Company"), a wholly owned subsidiary of Cinergy, which coordinates, and will continue to coordinate, risk management through the Insurance and Claims Department of its Global Risk Management Department.<sup>2</sup>

Cinergy intends Cinergy Captive to underwrite a significant portion of the Cinergy System deductible or self-insured retained risks for workers' compensation, general liability, auto liability and property insurance coverage. In addition to this primary role of underwriting System retained risks, Cinergy Captive may be used to replace, or reduce, insurance coverage purchased on behalf of System Companies from traditional insurance providers for workers' compensation, general liability, auto liability and property risks. In this context, Cinergy Captive would seek to obtain equal levels of loss protection and coverage in the reinsurance market. Cinergy, at some future time, also may propose to underwrite certain additional coverage, but not without a further Commission order.<sup>3</sup> Consequently, Cinergy requests that the Commission reserve jurisdiction over these potential additional activities, pending completion of the record. Cinergy does not intend to increase the risk of loss to the Cinergy System with its use of Cinergy Captive, but to enhance the System's risk

<sup>2</sup> On an annual basis, Cinergy's System Companies spend approximately \$15 million for commercial insurance and related services. Currently, System Companies maintain insurance policies with underlying deductibles of \$1 million per event for automobile and general liability coverage and \$2.5 million for property coverage. In excess of these deductibles, System Companies purchase commercial insurance. System Companies currently self-insure for workers' compensation in the States of Ohio, Indiana and Kentucky (*i.e.*, carry no or only minimal commercial insurance for those risks). System Companies, nevertheless, from time to time, may choose to purchase commercial insurance in place of, or to reduce, the deductible or self-insurance to meet their strategic goals and objectives. Commercial premiums and the deductibles and self-insured retained risks are then allocated by the Service Company to subsidiaries owning a given risk, based on such factors as number of automobiles, payroll, revenues, total property values, product throughput, as well as loss history. The allocation methods used are designed to result in a fair and equitable apportionment of insurance costs to System Companies consistent with the relevant cost drivers.

<sup>3</sup> Cinergy Captive may propose to underwrite the following additional coverages: transmission and distribution line coverage; construction-related insurance for contractors working on projects for System Companies; performance and construction bonds; employee benefits; legal malpractice for employee attorneys; directors and officers fiduciary liability; weather risk; and credit risk or reinsurance of certain customer warranty programs.

<sup>1</sup> Cinergy directly or indirectly owns all the outstanding common stock of five public utility companies, the most significant of which are PSI Energy, Inc. ("PSI"), an Indiana electric utility, and The Cincinnati Gas & Electric Company ("CG&E"), a combination Ohio electric and gas utility and holding company. PSI and CG&E (including the utility subsidiaries of CG&E, the most significant of which is The Union Light, Heat and Power Company, a Kentucky combination electric and gas utility) collectively provide electric and gas service to approximately 1.6 million retail and wholesale customers in parts of Indiana, Ohio and Kentucky. The Cinergy System also includes numerous nonutility subsidiaries engaged in energy-related businesses and other nonutility businesses.

management processes, while attempting to save costs.

Cinergy states that, in today's insurance market, traditional insurance programs are relatively expensive to maintain, largely due to the costs of doing business with a "full service" traditional insurer. Underlying the traditional insurance programs is a robust reinsurance market that is available, generally speaking, only to insurance companies. By eliminating the traditional insurance company "middleman" for selected transactions and coverage, Cinergy seeks to take advantage of opportunities for savings, it believes exist for those companies that are able to deal directly in the reinsurance market. Cinergy further notes that many Fortune 500 companies presently utilize a captive insurance company to control and manage their insurance costs more effectively.

Cinergy believes that its proposed comprehensive insurance program—blending traditional commercial insurance, management of retained risks through the Cinergy Captive and direct access to the wholesale reinsurance markets—is the best way for it to maximize cost effectiveness, minimize risk exposure and provide each System Company with the flexibility to meet its strategic goals and objectives. Cinergy proposes to establish Cinergy Captive as a wholly owned, direct subsidiary organized under Vermont law and licensed to operate as an insurance company in the State of Vermont.<sup>4</sup>

Cinergy intends to establish Cinergy Captive with an aggregate initial capitalization of approximately \$12.5 million, comprised of (i) \$2.5 million to be supplied by Cinergy as an equity contribution and (ii) approximately \$10 million in 2004 premiums from participating System Companies (representing the value of the total loss expected by all System Companies for 2004 expected events).<sup>5</sup> Funding of the

approximately \$10 million in 2004 premiums will be paid in cash by the participating System Companies based on their allocated shares.<sup>6</sup>

Cinergy Captive will initially focus on providing four major coverages to System Companies: (1) Workers' compensation, (2) general liability, (3) automobile liability and (4) property (including terrorism, as defined under the Terrorism Risk Insurance Act of 2002). Cinergy Captive will not provide these coverages to any company or person other than System Companies. Specifically, Cinergy Captive is expected to underwrite, or assume the risk of, a significant portion of the deductible or self-insured retained risk currently maintained by System Companies for these coverages. Cinergy Captive will attempt to reinsure a portion of these risks in the reinsurance market. As previously discussed, Cinergy Captive may also seek to replace, or reduce, insurance coverages of System Companies obtained from traditional commercial insurers in the areas of general liability, automobile liability, property and possibly workers' compensation. In this event, the captive will seek to obtain equal levels of loss protection and coverage in the reinsurance market.

An unaffiliated Vermont management company will be retained to provide management and administrative services, as is the case with most captives.<sup>7</sup> Cinergy Captive will allocate premiums and nominal operating costs to System Companies using the same methods currently used for allocation of the costs of commercial insurance

up to \$2.5 million. The captive will attempt to purchase reinsurance in excess of \$1 million for workers' compensation and aggregate "stop loss" coverage, to limit the overall risks assumed by the captive for all liability coverages.

<sup>6</sup> All funds will be deposited with Cinergy Captive's bank and invested in securities exempt under rule 40. Beyond its initial capitalization and funding of the captive, Cinergy will provide any subsequently required capital contributions through additional equity and or debt purchases exempt under rule 52 or 45, letters of credit or other forms of credit support. If payment is required under a letter of credit, Cinergy will reimburse the bank providing such letter of credit and the amount paid will be treated as a capital contribution to the captive.

<sup>7</sup> Administrative functions will be directed by the Service Company through the Vermont management company and will include: (1) Accounting and reporting activities; (2) legal, actuarial, banking and audit services; (3) negotiating reinsurance contracts, policy terms and conditions; (4) invoicing and making payments; and (5) managing regulatory affairs. All goods and services provided by the Service Company to the captive will be provided in accordance with the Commission-approved service agreement for nonutility associate companies and the captive's costs will be recovered in the premiums paid by the respective System Companies.

premiums.<sup>8</sup> The allocation methods are designed to result in a fair and equitable apportionment of insurance costs to System Companies congruent with the relevant cost drivers.<sup>9</sup>

The Service Company's Insurance and Claims Department will continue to give each System Company a choice of deductibles. Premiums payable to Cinergy Captive will be based on the level of deductibles chosen, as well as the allocation methods (number of vehicles, payroll, revenues, *etc.*). Consideration will also be given to the subsidiary's own prior loss experience, so that a subsidiary with a historically lower loss experience would be rewarded with lower premiums. Cinergy notes that, under the current program, a commercial insurance premium increase caused by a significant loss or a higher frequency of losses may have been allocated on a basis that did not take the cause of the loss or frequency of loss into account. Under the new program, the source of the loss or the subsidiary's loss history will also be used as a basis for allocation.

To the extent Cinergy Captive obtains insurance at a lower cost than could be obtained through traditional insurers, the savings in the premiums could flow through ratably to System Companies, using the allocation method for premiums. Good loss prevention would be encouraged, and with lower administrative costs and the expected efficiency of the new program, overall premiums are expected to be lower.

Cinergy Captive will analyze the commercial insurance bought by System Companies and coordinate coverage to minimize the risk of loss to the System. An actuarial analysis will be performed to determine the proper premiums, consistent with methods used to determine the retained risk premium. Cinergy Captive will apply stringent credit standards to all reinsurance counterparties, as Cinergy currently does with its insurance providers.

Cinergy states that its captive will not be operated to generate profits beyond those necessary to maintain adequate reserves. To the extent that premiums and interest earned exceed current

<sup>8</sup> See note 2 above.

<sup>9</sup> For example, automobile liability insurance costs will be allocated to System Companies in proportion to the number of vehicles operated by each company (or a similar approximation of risk exposure). Allocation to the System Companies for workers' compensation insurance rates will be based on payroll and job classifications. General liability rates will be allocated to the System Companies based on projected revenues to determine a base premium, audited and adjusted at year-end. Property insurance rates will be allocated by the total property values of the System Companies.

<sup>4</sup> Vermont is the largest, most established domestic domicile for captive insurance companies ("captives") and has had stable and consistent growth of licensed captives over the past 20 years. Applicant states that the Vermont Department of Banking, Insurance, Securities and Health Care Administration has a strong, experienced regulatory staff focused on maintaining captive solvency.

<sup>5</sup> Premiums for the first year were actuarially determined to equal the aggregate losses for System Companies plus administrative expenses. Ultimate first year losses are estimated to be approximately \$9.5 million, an amount Applicant expects will be paid over a seven-year period. Applicant states that this \$10 million estimate (the 2004 premiums for the System Companies) was determined based on the following analysis. Initially, the captive will assume the risk from System Companies for losses between zero and \$1 million for workers' compensation, general liability and automobile liability. In addition, the captive will assume the property risks in excess of a \$1 million deductible

claims and expenses, an appropriate reserve will be accumulated to respond in years when claims and expenses exceed premiums. Furthermore, to the extent losses over the long term are lower than projected, Cinergy Captive could correspondingly lower premiums, reducing the System Companies' premium expenses. In addition, if losses are lower than predicted, the captive may be able to reduce the amount of its reserves and return excess capital to the System Companies.

Cinergy states that, based on actuarial models with a high confidence factor, it is expected that the captive would not experience losses in excess of approximately \$10 million in the first year of operation. In the unlikely event of losses exceeding this amount, not covered by outside insurance and accumulated claim reserves, additional capital from Cinergy would be needed. Commercial insurance will continue to respond to any claims in excess of the retained risks to ensure coverage will be available to the Cinergy System. Finally, to assure its financial strength and integrity (it must comply with strict Vermont capital-to-premium requirements of approximately \$1 of capital for every \$5 of net premium), Cinergy Captive will attempt to purchase aggregate "stop loss" protection from a commercial insurer.

The benefits to be obtained from the use of a captive insurance subsidiary are, in sum: (1) Reduced System exposure to retained risks and enhanced risk management control; (2) reduced overhead charges for commercial insurance underwriting; (3) direct access to global reinsurers; (4) continued choice of deductibles; (5) greater control and input over the claims management process; and (6) less reliance on the commercial insurance market resulting in less volatility of future premiums.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-3168 Filed 2-12-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49212; File No. SR-FICC-2003-05]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Additional Account Structures

February 9, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 9, 2003, the 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 primarily by FICC. 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 proposed rule change would amend the rules of both the Government Securities Division ("GSD") and the Mortgage-Backed Securities Division ("MBSD") of FICC with respect to their additional account structures.

#### 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 such statements.<sup>2</sup>

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

GSD and MBSD both permit members to open and maintain accounts in addition to their primary accounts. Additional accounts developed as an administrative convenience provided to members who wanted to keep certain activities segregated from their primary accounts. The proposed rule change

would address certain legal risks associated with these accounts.

#### Government Securities Division

For each additional account opened for a member, GSD assigns a unique participant ID number and separately calculates daily clearing fund requirements, funds-only settlement requirements, and net settlement positions based solely upon the activity in the additional account.<sup>3</sup> Currently, the opening and maintenance of additional accounts requested by a GSD member is governed by an agreement between the member and GSD.<sup>4</sup> Pursuant to the additional account agreement, the member agrees to be responsible for all of the obligations and liabilities associated with the additional account; however, GSD's rules do not address the opening and maintenance of these additional accounts.<sup>5</sup>

The proposed rule change would reflect the principles set forth in the additional account agreement and those that FICC management has defined to govern these accounts. Specifically, additional accounts that are opened for someone other than a member itself or for the member's wholly-owned subsidiary shall require the approval of FICC's Membership and Risk Management Committee. The proposed rule change makes clear that GSD members will be responsible for all of the obligations arising under GSD's rules that are associated with additional accounts. The additional account entity will not have any proprietary interest with respect to the additional account, and will not have any rights or privileges of GSD members. GSD will have the right to deny the opening of an additional account if it believes that the additional account entity presents risk to FICC, such as legal risk from an insolvency regime that is adverse to GSD's rights.

<sup>3</sup> The maintenance of such accounts has billing implications as set forth in GSD's fee structure.

<sup>4</sup> The additional account structure permitted by GSD should be contrasted with GSD's executing firm feature, which permits a member to submit trades of a non-GSD member with which the member has a correspondent relationship. Executing firm trades are commingled with the member's own trades in the member's GSD account and are not separated from the member's other activity (including other executing firm activity) for any purpose. Therefore, the member's clearing fund requirement, funds-only settlement requirement, and net settlement position reflects all executing firm activity in its GSD account.

<sup>5</sup> The only exceptions to this are with respect to repo brokers who are expressly required to open second accounts for their brokered repo activity and GSD's fee structure which includes charges associated with the maintenance of additional accounts.

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

<sup>2</sup> The Commission has modified parts of these statements.