

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70484; File No. SR-FICC-2013-08]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change Concerning the Mortgage-Backed Securities Division's Notification of Settlement Process

September 24, 2013.

I. Introduction

On August 9, 2013, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2013-08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the **Federal Register** on August 23, 2013.³ The Commission received no comment letters. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

A. Nature of the Proposed Rule Change

FICC is making two changes to the notification of settlement ("NOS") process currently utilized by FICC's mortgage-backed securities division ("MBSD"). First, FICC's rule change would shorten, from two days to one, the grace period during which members must reconcile NOS submissions. Second, the rule change would increase from \$25 to \$150 the penalty that members must pay each day if they fail to reconcile an NOS submission within this grace period.

B. The Notification of Settlement Process

MBSD members settle certain trades between themselves, without using the MBSD as a central counterparty.⁴ The NOS process ensures that the MBSD is notified when these bilateral settlements occur.⁵ Under the NOS process, both

counterparties to a bilaterally settled trade must provide the MBSD with an NOS submission stating that settlement has occurred and on what terms.⁶ If the trade details set forth in the counterparties' respective NOS submissions match, the MBSD updates each counterparty's purchase and sale report to reflect that the transaction has settled, and deletes the transaction from the counterparties' respective open commitment reports.⁷

Members seeking to initiate the NOS process are required to provide the MBSD with an NOS submission on clearance day.⁸ The counterparties to these trades must reconcile the initiator's NOS submission within two days of its receipt by the MBSD. To reconcile an NOS submission, the counterparty must either provide the MBSD with an NOS submission that matches the one provided by the initiator, or send the MBSD a DK notice.⁹ Reconciliation can also occur when the initiator rescinds its NOS submission before its counterparty provides a matching NOS. Currently, if either the initiator or the counterparty fails to reconcile an NOS submission within two days of its receipt by the MBSD, that member is subject to a late fee of \$25.00 per day. As noted, the rule change, as approved, will shorten this two-day grace period to one day, and raise the fine from \$25 to \$150 per day.

According to the MBSD, the timely reconciliation of NOS submissions serves to minimize the risk that the MBSD might unnecessarily continue to hold and collect margin on a trade that has, unbeknownst to the MBSD, settled bilaterally. FICC contends that the timely reconciliation of NOS submissions is also important because, in the event of a member's insolvency, FICC must quickly and accurately determine which of the insolvent member's positions need to be liquidated.

III. Discussion

Section 19(b)(2)(C) of the Act¹⁰ directs the Commission to approve a self-regulatory organization's proposed

rule change if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act¹¹ requires, among other things, that the rules of a clearing agency registered with the Commission be designed to (i) Assure the safeguarding of securities and funds which are in the custody or control of the clearing agency, or for which it is responsible, (ii) foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and (iii) protect investors and the public interest.

The Commission concludes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,¹² for several reasons. First, the proposed rule change helps protect the securities and funds in FICC's control, not only by encouraging members' timely compliance with the MBSD's risk management protocols, but also by enabling the MBSD to identify and begin liquidating an insolvent member's open trades more quickly. The latter could help the MBSD and its members avoid unnecessary losses in the event the MBSD must liquidate an insolvent member's open positions during a period of market disruption, when prices may be falling rapidly. Second, the proposed rule change fosters cooperation and coordination among those engaged in the settlement of securities transactions by encouraging members to provide the MBSD with reconciliation information more rapidly. Finally, the proposed change protects investors and the public interest by enhancing the MBSD's ability to manage an insolvent member's open positions, which should mitigate the risk that a member's insolvency could trigger instability in the broader financial system.

IV. Conclusion

On the basis of the foregoing, the Commission concludes that the proposal is consistent with the requirements of the Act, particularly the requirements of Section 17A of the Act,¹³ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (File No. SR-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 70232 (August 19, 2013), 78 FR 52598 (August 23, 2013) (SR-FICC-2013-08).

⁴ Transactions may settle bilaterally (i.e., outside of the MBSD) for several reasons, including: (i) The transactions are ineligible for pool netting, (ii) the transactions involve a specified pool trade, or (iii) the parties elect to settle the trade bilaterally. The following types of transactions are all eligible for bilateral settlement: (i) Settlement-balance order, destined to be announced ("TBA") transactions; (ii) trade-for-trade TBA transactions; and (iii) specified pool trades.

⁵ The MBSD must be notified when trades settle bilaterally because the trades are protected by the

MBSD's trade guarantee. As a result, the MBSD will continue to hold initial margin and collect mark-to-market margin for these trades until it is notified that the trades have settled. *See generally* MBSD Rulebook, Rule 4.

⁶ MBSD Rulebook, Rule 10, Section 2.

⁷ *Id.*

⁸ For purposes of the NOS process, clearance day is the day on which the seller delivers the securities to the buyer. Clearance day is generally on or after the contractual settlement day.

⁹ A "DK" notice is a statement that the member "does not know" (i.e., denies the existence of) a transaction. MBSD Rulebook, Rule 1, p. 7.

¹⁰ 15 U.S.C. 78s(b)(2)(C).

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² *Id.*

¹³ 15 U.S.C. 78q-1.

¹⁴ 15 U.S.C. 78s(b)(2).

FICC–2013–08) be and hereby is approved.¹⁵

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70483; File No. SR–FINRA–2013–040]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Limited Waiver of the TRACE Professional Real-Time Data Display Fee Pilot

September 24, 2013.

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 September 17, 2013, the Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon receipt of this filing by 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

FINRA is proposing to amend FINRA Rule 7730(c)(1)(A)(i) to extend the pilot program to November 7, 2014. The pilot program provides a limited waiver of the Professional Real-Time Data Display Fee of \$60 to access Real-Time Trade Reporting and Compliance Engine (“TRACE”) transaction data in

connection with certain free trials of data products.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

Pursuant to FINRA Rule 7730(c)(1)(A), FINRA charges a Professional \$60 per month, per display application per Data Set ⁵ of Real-Time⁶ TRACE transaction data. The fee waiver pilot program in FINRA Rule 7730(c)(1)(A)(i) waives the \$60 fee for one month for a Professional to access Real-Time TRACE transaction data in connection with a vendor’s offer of a free trial of a data product that displays Real-Time TRACE transaction data.⁷

⁵ FINRA makes Real-Time TRACE transaction data available in three Data Sets—the Corporate Bond Data Set, the Agency Data Set and the ABS Data Set. A fourth Data Set, the Rule 144A Data Set, will become available in 2014. See Securities Exchange Act Release No. 70345 (September 6, 2013), 78 FR 56251 (September 12, 2013) (Order Approving File No. SR–FINRA–2013–029) (SEC approves a proposed rule change to disseminate transactions in TRACE-Eligible Securities that are effected pursuant to Rule 144A (17 CFR 239.144A) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and to establish the Rule 144A Data Set).

⁶ Real-Time is defined in FINRA Rule 7730(f)(3).

⁷ See Securities Exchange Act Release No. 68255 (November 19, 2012), 77 FR 70515 (November 26, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2012–049) (proposed rule change establishing the fee waiver pilot program).

In general, Real-Time TRACE transaction data is accessed not directly from FINRA but through a vendor, such as Bloomberg, L.P. and its Bloomberg display application, or other redistributors (collectively, “vendors”) of financial market data. Under this arrangement, a Professional pays the vendor for the license to use the vendor’s display application and if the display application displays Real-Time TRACE transaction data, the payment must include the applicable TRACE fee, which the vendor remits to FINRA. Vendors continually develop new products and offer free trials of such products to members and other Professional end

The fee waiver pilot program permits Professionals to access Real-Time TRACE transaction data on a free trial basis in connection, and concurrently, with the free trial of the vendor’s product. The pilot program will expire on November 8, 2013.

FINRA proposes to extend the fee waiver pilot program approximately one year to November 7, 2014 to permit more time to assess the effectiveness of the pilot program. All other terms and conditions of the fee waiver pilot program would remain the same. The FINRA fee waiver would continue to be limited to one month (*i.e.*, a period not longer than 31 days). In addition, the FINRA fee waiver would continue to be available to not more than four Professionals associated with, employed by, or otherwise affiliated with a member, employer or other person during one free trial period.⁸ As is currently the case, once the Real-Time Data Display Fee had been waived, a Professional and the member, employer or other person whom the Professional is associated with, employed by, or otherwise affiliated with would not be eligible for the FINRA fee waiver again in connection with another free trial offered by the same vendor until 12 months had lapsed from the last day of the prior fee waiver.⁹ However, a Professional and the member, employer or other person with whom the Professional is associated or otherwise affiliated would be eligible for a FINRA fee waiver in connection with a free trial offered by a different vendor regarding its data products.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that

users of market data. Such new products may display, among other data, Real-Time TRACE transaction data.

⁸ The fee waiver pilot program is not applicable to Professionals associated with, employed by or otherwise affiliated with entities that obtain unlimited internal use of market data through any number of display applications by paying a flat fee of \$7,500 (per month per Data Set) under Rule 7730(c)(1)(A) (“enterprise fee”). The enterprise fee structure is inconsistent with the limitation that the fee waiver apply to not more than four Professionals per entity per trial period.

⁹ For example, if a Professional were granted a waiver for one month beginning on November 15, 2013, the Professional would not be eligible for another waiver in connection with another free trial offered by the same vendor until December 15, 2014.

¹⁰ 15 U.S.C. 78o-3(b)(6).

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

¹⁶ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).