executed at the price(s) agreed upon due to market conditions, a trade representing the execution of the options leg of the transaction may be cancelled at the request of any member that is a party to that trade.

CBOE also proposes to amend CBOE Rule 6.9 to permit member solicitation of a security future-option order, and CBOE Rule 27.1, which would create a new definition of a security future-option order with respect to an order involving a Buy-Write Option Unitary Derivative (''BOUND''),[8] as that term is defined in CBOE Rule 27.1(a).[9] The proposed rules also make clear in the text of Interpretation .03 to CBOE Rule 6.74 that as a type of inter-regulatory spread order, a security future-option order may be crossed. A typographical error is also fixed in the text of Interpretation .03 to CBOE Rule 6.74.

2. Statutory Basis

Since the proposed rule change offers execution priorities for certain orders that CBOE believes are of a similar degree of complexity to those approved by the Commission for special priority rules and would offer investors additional opportunities to manage risks while protecting priority of orders of public customers, CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act[10] in general and furthers the objectives of Section 6(b)(5)[11] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

*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 that is not necessary or appropriate in furtherance of the purposes of the Act.

[8] CBOE Rule 27.1(a) defines a BOUND as ''a security issued, or subject to issuance, by The Options Clearing Corporation pursuant to the Rules of The Options Clearing Corporation which gives holders and writers thereof such rights and obligations as may be provided for in the Rules of the Options Clearing Corporation.''

[9] The proposed definition of security future-option order with respect to a BOUND is based on the definition of stock-option order with respect to a BOUND. CBOE Rule 27.1(l) defines stock-option order with respect to a BOUND as ''an order to buy or sell a stated number of units of an underlying or a related security coupled with a transaction in a BOUND contract on the opposite side of the market representing the same number of units of the underlying or a related security.''

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

*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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4[13] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed 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.[14]

**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 should be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2004–14. 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 hard copy 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2004–14 and should be submitted by April 1, 2004.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on March 4, 2004, the date CBOE filed Amendment No. 1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04–5550 Filed 3–10–04; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49357; File No. SR–CHX–2004–09]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

March 3, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on January 30, 2004, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') 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 Exchange. On March 2, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its membership dues and fees schedule (the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Ellen Neely, Senior Vice President & General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 1, 2004 (''Amendment No. 1''). Amendment No. 1 replaces the proposed rule change in its entirety.

''Fee Schedule''), effective February 1, 2004, to: (1) Reduce the fixed fees for specialists trading both listed and Nasdaq/NM securities; (2) reduce the fixed fee paid by dedicated odd-lot dealers and establish a credit for odd-lot dealers that send round-lot orders to the Exchange for execution; (3) eliminate the charges currently re-billed to the Exchange's floor brokers for NYFIX connectivity; (4) confirm the elimination of the Exchange's marketing fee and establish an increase in the transaction fees charged to CHX market makers; (5) increase, from $10,000 to $12,500, the monthly maximum transaction fee charge for MAX orders sent to CHX specialists; (6) increase, from $1,000 per year to $3,000 per year, the current MAX access charge; (7) extend the existing processing fee to both listed and OTC securities; and (8) make non-substantive changes to the organization of the text.

Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

## MEMBERSHIP DUES AND FEES

**A. Membership Dues and Transfer Fees**

No change to text.

| | |
|---|---|
| **B. Self-Regulatory Organization Fee [1]** | $100 per member and member organization per month. *This fee shall not be applicable to memberships to which a nominee has not been assigned and which are not otherwise being used.* |

**C. Registration Fees**

No change to text.

**D. Specialist Assignment Fees**

No change to text.

**E. Specialist Fixed Fees**

Except in the case of Exemption Eligible Securities (as defined above in Section D), which shall be exempt from assessment of fixed fees, specialists will be assigned a fixed fee per assigned stock on a monthly basis, to be calculated as follows:

| | |
|---|---|
| Fixed Fee Per Dual Trading System Security = | $[500,000] *450,000* × Percent of Fixed Costs Per Tier × *(*CTA Trade Volume Per Security/CTA Trade Volume Per Tier*).* (Effective *February 1, 2004* [August 1, 2002]). |
| Fixed Fee For Specialist Firms Trading Nasdaq/NMS securities = | *The monthly fixed fee charged each member firm for the month of December 2003, less each firm's pro rata share of $39,750. A specialist firm's pro rata share shall be based on the firm's percentage participation in the total fixed fees charged in December 2003. (Effective February 1, 2004).*<br>*The monthly fixed fee will be further reduced to $0, in each month of 2004, if the Exchange's overall share volume in Nasdaq/NM Securities meets the following targets:*<br>*1st Quarter: 40 million average daily shares;*<br>*2nd Quarter: 50 million average daily shares;*<br>*3rd Quarter: 65 million average daily shares;*<br>*4th Quarter: 80 million average daily shares.*<br>[The lowest monthly fixed fee charged each member firm for the period from January through June 2002, less the market data rebate earned by the firm in June, 2002.]<br>[Each specialist firm shall be charged a Fixed Fee Charge equal to that specialist firm's pro rata share of an additional $10,000 monthly fee. A specialist firm's pro rata share shall be based on the firm's percentage participation in the total market data rebates paid to specialist firms trading Nasdaq/NMS Securities in June 2002.] |
| Fixed Fee Per Dedicated Odd-Lot Dealer | $*200,000* [$250,000]/year*, billed on a monthly* basis (Effective *February 1, 2004* [January 1, 2001]) |

* * * * * * *

**F. Transaction and Order Processing Fees**

| | |
|---|---|
| 1. SEC Transaction Fees | No change to text. |
| 2. NASD Fees on Cleared Transactions | No change to text. |
| 3. Order Processing Fees | No change to text. |
| 4. Transaction Fees | |
| a. No change to text. | |
| b. No change to text. | |
| c. No change to text. | |
| d. *Executions by market makers* [Reserved for future use.] | *$.0050 per share (up to a maximum of $100 per side), subject to the fee reduction described in (i), below and the fee cap described in (j) below. (Effective February 1, 2004)* |

MEMBERSHIP DUES AND FEES—Continued

| | |
|---|---|
| e. In Nasdaq/NM securities, agency executions executed through a floor broker [and market maker executions]. | $.0025 per share (up to a maximum of $100 per side), subject to the fee reduction described in (i), below and the fee cap described in (j) below. |
| f. In Dual Trading System issues, agency executions executed through a floor broker [and market maker executions]. | $.0035 per share (up to a maximum of $100 per side), subject to the fee reduction described in (i), below and. the fee cap described in (j) below. |

g. No change to text.

h. The monthly maximum for transaction fees for orders sent via MAX, except agency orders executed through floor brokers, is [$10,000] *$12,500* or, if less, $.40 per 100 average monthly gross round lot shares. *(Effective February 1, 2004)*

i. Effective August 1, 2003, the per-share fees described in *(d)*, (e) and (f) above will be reduced on shares traded above a total monthly charge of $150,000 (within each section) as follows:

* * * * * * *

j. The transaction fees set forth in Sections F.4*(d),* (e) and (f) shall be subject to the following monthly maximums:

* * * * * * *

k. No change to text.

| | |
|---|---|
| 5. Floor Broker as Principal Fees | No change to text. |

[6. Marketing Fees]

[(a) A marketing fee of $.01 per share shall be assessed for each Subject Transaction in a Subject Issue occurring on or before December 31, 2003; *provided, however,* that a specialist who trades a Subject Issue may elect to decline imposition of the marketing fee.]

[''Subject Issue'' shall mean any issue which constitutes an exchange-traded fund and meets the following two criteria: (a) Average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two month period; and (b) market maker share participation in the same issue exceeds 1% for each month during the same two-month period.]

[''Subject Transaction'' shall mean (a) any trade with a customer, whether the contra party is a specialist or a market maker, where the order is delivered to the Exchange via the MAX system or where compensation is paid to induce the routing of the order to the Exchange; or (b) any trade between a specialist and a market maker in which the market maker is exercising rights under the market maker entitlement rules, in which case the marketing fee shall be assessed against the market maker only.]

[(b) The marketing fee assessed and collected by the Exchange shall be remitted to the specialist trading the Subject Issue. To the extent that all marketing fees collected during a three-month period are not expended by the specialist during such period, the Exchange shall refund any remaining marketing fees to the payors *pro rata* in proportion to the marketing fees paid by such payors; *provided, however,* that the Exchange shall not be obligated to refund amounts of $1000 or less.]

**G. Space Charges**

No change to text.

**H. Equipment, Information Services and Technology Charges**

* * * * * * *

| | |
|---|---|
| [NYFIX Network and Connection Charges] | [All NYFIX charges above $15,000 per month will be rebilled monthly to member firms that access the NYFIX network, based on the proportion of each firm's use of the network during the month.] |

* * * * * * *

| | |
|---|---|
| MAX Access Charge | $[1,000]*3,000* per access point, allocated pro rata among the firms that gain access to the Exchange's MAX system through that access point. *(Effective February 1, 2004)* |
| OTC Access and Connection Charges | No change to text. |

* * * * * * *

**I. Clearing Support Fees**

(minimum clearing support fee is $600 per month)

1. Account Fee

No change to text.

2. CUSIP Fees

| | |
|---|---|
| Specialist OTC CUSIP Fee | $50 per OTC CUSIP per month |
| Market Maker CUSIP Fee | $10 per CUSIP per month |
| Odd-Lot Dealer CUSIP Fee[2] | $2.50 per CUSIP per month |
| Floor Broker as Principal | $2 per CUSIP per month |

The above Specialist OTC CUSIP Fee will be subject to the following discounts:

If between 20 and 200 trades occur in a particular CUSIP in a given month, the Specialist OTC CUSIP Fee for that CUSIP shall be $40 for that month.

MEMBERSHIP DUES AND FEES—Continued

If less than 20 trades occur in a particular CUSIP in a given month, the Specialist OTC CUSIP Fee for that CUSIP shall be $20 for that month.

*The Odd Lot Dealer CUSIP fee does not apply to any issue in which the odd-lot dealer is also the specialist for the issue.*

3. Processing Fees

| | |
|---|---|
| Transactions [in OTC securities] that are executed by floor brokers in securities that are not *listed or traded UTP on the Exchange* [assessed a Specialist OTC CUSIP Fee] but are processed by the Exchange's clearing systems. | $.0015/share, up to $100 per side. |

**J. Listing Fees**

No change to text.

**K. Market Regulation and Market Surveillance Fees**

No change to text.

**L. Supplies and Reports**

No change to text.

**M. Credits**

* * * * * * *

*4. Credits for Dedicated Odd-Lot Dealers*

*Total monthly fees owed by a Dedicated Odd-Lot Dealer will be reduced (and these odd-lot dealers will be paid each month for any unused credits) by a credit of $.08 per round-lot trade sent by the Dedicated Odd-Lot Dealer to Exchange specialists for execution.*

[[1] This fee shall not be applicable to memberships to which a nominee has not been assigned and which are not otherwise being used.]

[[2] The Odd Lot Dealer CUSIP fee does not apply to any issue in which the odd-lot dealer is also the specialist for the issue.]

* * * * *

## 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 aspects of such statements.

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

1. Purpose

The Exchange proposes to amend its Fee Schedule, effective February 1, 2004. These fee changes would be part of the CHX's 2004 budget. The Exchange proposes to reduce the fees charged to the Exchange's specialists, floor brokers and odd-lot dealers.[4] Specifically, the Exchange seeks to reduce the total fixed fee charged specialists trading listed securities by $50,000 per month, and also proposes a reduction of approximately $40,000 in the monthly fixed fee charged to specialists trading Nasdaq/NM securities,[5] with an opportunity for the fee to be reduced to $0 for each month if the Exchange's overall share volume in Nasdaq/NM securities reaches specific targets.[6] The Exchange also proposes a $50,000 reduction in the annual dedicated odd-lot dealer fee and a corresponding credit of $.08 per round-lot trade for orders that these odd-lot dealers send to Exchange specialists for execution. Finally, the Exchange proposes to eliminate the current re-billing, to floor brokers, of certain charges relating to the use of the NYFIX network. According to the Exchange, these fee reductions and credits are designed to allow the Exchange to continue to remain competitive in its efforts to provide an efficient floor-based venue for its members to act as specialists, floor brokers and odd-lot dealers.

Another proposed change to the Fee Schedule confirms the elimination of the Exchange's marketing fee and an increase, from $.0035 per share to $.0050 per share, of the transaction fees charged to the Exchange's market makers.[7] The Exchange first imposed a marketing fee in 2001, to ensure that all members that trade particular securities share, with CHX specialist firms, the

[4] *See* CHX Fee Schedule, Section E and Section H.

[5] Under the proposed schedule, the fixed fee for specialists trading Nasdaq/NM securities is based on the fixed fee charged for the month of December 2003. This fixed fee used to be based on the lowest fixed fee charged for the period from January through June 2002, less the market data rebate earned by the firm in June 2002. Prior to July 2002, the fixed fee for specialists trading Nasdaq/NM securities was calculated much as the fixed fee is currently calculated for specialists trading listed securities—the total fixed fee was divided among specialist firms based on how active their assigned stocks were in the market as a whole. The Exchange and its OTC specialist firms believed that it was appropriate, in July 2002, to move to a constant fixed fee for OTC specialist firms and is simply continuing that notion under the proposed fee schedule, with updated text. See Securities Exchange Act Release No. 46491 (September 11, 2002), 67 FR 58831 (September 18, 2002).

[6] Under the proposal, the monthly fixed fee would be reduced to $0 for all specialists trading Nasdaq/NM securities for each month if the Exchange's overall share volume in those securities reaches the following targets: 40 million average daily shares (in the first quarter of 2004); 50 million average daily shares (in the second quarter of 2004); 65 million average daily shares (in the third quarter of 2004); and 80 million average daily are shares (in the fourth quarter of 2004). *See* Fee Schedule, Section E. The Exchange believes that it is appropriate to base a specialist reduction in this fixed fee on the total number of shares traded in Nasdaq/NM securities on the Exchange, whether the shares are executed by a specialist or floor broker, for two primary reasons: (1) To reward the specialists assigned to these securities, who typically participate in the execution of a majority of the trades and shares executed on the Exchange in Nasdaq/NM securities (*e.g.*, 78.3% of the shares executed in these securities in 2003); and (2) to create an incentive for specialists to continue to maintain their assignments in Nasdaq/NM securities, because trades in these securities can currently be executed on the Exchange only if the securities are assigned to a specialist. The Exchange believes it is important to provide these awards and incentives to specialists to ensure the viability of its OTC program, which the Exchange has seen some recent declines in trading volume.

[7] These transaction fees are subject to a maximum of $100 per side and are subject to other reductions and caps set out in the Exchange's Fee Schedule. *See* Fee Schedule, Section F.(4)(d).

costs associated with attracting order flow to the Exchange, as well as the license fees assessed by the owners of trademarks associated with certain exchange-traded funds (''ETFs'').[8] Because the Exchange now believes that this fee is no longer necessary to help specialists attract order flow to the Exchange, and because the Exchange has now taken on the responsibility for paying any ETF license fees, the Exchange allowed the marketing fee to expire on December 31, 2003, and now proposes to delete that provision from the Fee Schedule. At the same time, the Exchange believes that it is appropriate to increase the transaction fees charged to the Exchange's market makers to help the Exchange defray the costs associated with its market maker-related regulatory activities and the costs associated with any license fees that the Exchange is now responsible for paying.[9]

The CHX also proposes to make changes to the Exchange's Fee Schedule to increase, from $10,000 to $12,500, the monthly transaction fee cap on the execution of orders sent through the Exchange's MAX system to specialists; increase, from $1,000 to $3,000, the annual MAX access charge assessed to firms that gain access to the Exchange's MAX system; and extend, to listed securities, the Exchange's processing fees that are currently charged only for transactions executed by floor brokers in Nasdaq/NM securities that are not traded on the Exchange's floor.[10] The Exchange believes that these fee changes are designed to ensure that the Exchange's costs of providing systems and services are appropriately allocated among its members. For example, by increasing the monthly transaction fee cap on orders sent through the Exchange's MAX system to specialists and increasing the MAX system access charge—fees that are paid by the Exchange's order-sending firms—the Exchange can ensure that its order-sending firms pay an appropriate, but still competitive, level of fees to help cover the costs associated with their transactions on the Exchange (or associated with their access to the Exchange).[11] The Exchange also believes that by extending the Exchange's processing fees to listed securities, the CHX ensures that these transactions are assessed an appropriate fee to help cover the costs associated with the back-office work provided by the Exchange.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of section 6(b) of the Act,[13] in general, and section 6(b)(4) of the Act,[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

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

No written comments were either solicited or received with respect to the proposed rule change, as amended.

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

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii)[15] of the Act, and Rule 19b–4(f)(2)[16] thereunder, because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such proposed 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.[17]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, 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.* All comment letters should refer to File No. SR–CHX–2004–09. The 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, as amended, 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

[8] *See* Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (announcing immediate effectiveness of the new marketing fee provision to the CHX Fee Schedule, through December 31, 2001).

[9] With respect to the Exchange's costs associated with market maker surveillance and licenses fees, market makers, on the CHX, primarily trade for their own proprietary accounts. According to the Exchange, market makers are required to effect transactions so that they constitute a course of dealings reasonably calculated to contribute to the maintence of a fair and orderly market, and must make a market when requested by a floor broker, but have a few other affirmative obligations to contribute to the Exchange's market. *See* CHX Article XXXIV. The Exchange conducts surveillance of market maker trading activity, reviewing, among other things, compliance with the short sale rule's tick test and marking requirements. When the Exchange is the designated examining authority for a firm with a market maker account, it also conducts periodic examinations to assess compliance with other Commission and CHX rules. According to the Exchange, to the extent that these firms operate from the CHX trading floor, they do not currently pay any market regulation or market surveillance fees associated with those routine examinations. *See* Fee Schedule, Section K, including footnote 3.

[10] According to the Exchange, the proposed rule change to Sections B. and I.(2) of the Fee Schedule move text from footnotes to the primary text of each section to ensure that the information is more understandable.

[11] Specifically, the Exchange believes that these fees help defray the costs, among other things, of maintaining and upgrading the Exchange's MAX system. This system, and other, interrelated functionalities, are used to handle orders sent to the Exchange. Among other things, they record the receipt of orders, route those orders to specialists (or where selected by the order-sending firm, to a floor broker representative) for handling and, for eligible orders, provide automatic executions.

[12] According to the Exchange, the transactions that are assessed this clearing processing fee are transactions in securities that are not listed or traded pursuant to unlisted trading privileges on the Exchange. If one of the Exchange's members, who is also a member of another Exchange or Nasdaq, effects a trade on that other market, the member can report the trade to the other Exchange or Nasdaq (without sending it to clearing) and then enter the transaction into the Exchange's back-office clearing systems to ensure that that transaction is included in the Exchange's clearing report. Information about that transaction then appears in the reports prepared by the Exchange for member firm use.

[13] 15 U.S.C. 78(f)(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

[17] *See* 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence March 2, 2004 the date the CHX filed Amendment No. 1.

Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CHX–2004–09 and should be submitted by April 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04–5549 Filed 3–10–04; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49363; File No. SR–FICC–2004–03]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting the Government Securities Division's Late Trade Data Submission Fine and Amending the Government Securities Division's Clearing Fund Rule

March 4, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 19, 2004, 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

The purpose of the proposed rule change is to (i) delete the Late Trade Data Submission Fine from the rules of the Government Securities Division (''GSD'') and (ii) amend GSD's clearing fund rule.

### 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.[2]

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

Late Trade Data Submission Fine Deletion

On November 14, 2001, the Government Securities Clearing Corporation (''GSCC''), FICC's predecessor, received Commission approval to fine members for submitting trade data after GSCC's 8:00 p.m. (New York time) trade data submission deadline.[3] The fine schedule was originally drafted and approved when many members were still submitting trade data in single batches at the end of the business day. GSCC did not implement the fine schedule because at the time of approval a majority of its members had begun submitting trade data in real-time. The fine schedule is no longer necessary, and FICC desires to delete it from GSD's rules.

Clearing Fund Rule Amendment

On July 21, 2003, FICC received Commission approval to reduce the permitted use of letters of credit from 70 percent to 25 percent of a GSD member's required clearing fund deposit.[4] The reference to ''70'' percent in Rule 4, Section 4 was amended in the approved filing, and FICC is seeking to amend the other reference to ''70'' percent in Rule 4, Section 10 that was inadvertently overlooked.

*(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.

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

The foregoing rule change relating to the deleted fine has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder because the proposed rule establishes or changes a due, fee, or other charge. The foregoing rule change relating to the amended clearing fund rule has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(4)[8] 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 or obligations of FICC or its members 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.

### 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.* All comment letters should refer to File No. SR–FICC–2004–03. 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, comments should be sent in either 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

[18] 17 CFR.200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] Securities Exchange Act Release No. 45053 (November 14, 2001), 66 FR 58771 [File No. SR–GSCC–00–09].

[4] Securities Exchange Act Release No. 48200 (July 21, 2003), 68 FR 44130 [File No. SR–GSCC–2002–11].

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).